

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT SWAT.

Service Appeal No. 1213/2019

Date of Institution ... 01.10.2019

Date of Decision ... 05.10.2021

Aziz Ahmad Ex-Constable No. 2658 Swat Police, District Swat:

... (Appellant)

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

MR. IMDAD ULLAH
Advocate

... For Appellant

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

... For Respondents

ROZINA REHMAN
ATIQ-UR-REHMAN WAZIR

... MEMBER (JUDICIAL)
... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant while serving as constable in police department was dismissed from service on 09-01-2015 on the charges of his involvement in criminal case vide FIR No. 687 dated 10-12-2013. The appellant filed Service Appeal No. 742/2016, which was decided vide judgment dated 06-11-2017 with direction to the respondents to conduct de-novo inquiry. As a result of de-novo inquiry, the appellant was again dismissed from service vide order dated 28-12-2017, against which the appellant filed another Service Appeal No. 415/2018 before this Tribunal, which was decided vide

judgment dated 04-04-2019 with direction to the respondents to again conduct de-novo inquiry and as a result of de-novo proceedings, the appellant was again dismissed from service vide order dated 15-07-2019. Feeling aggrieved, the appellant filed departmental appeal dated 22-07-2019, which was partially accepted and major penalty of dismissal from service was converted into major penalty of removal from service vide order dated 24-09-2019, hence the instant service appeal with prayers that the impugned orders may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that it is a well settled legal proposition that before imposition of major penalty of removal from service, regular inquiry is must, which however was not done in case of the appellant, as the appellant was not afforded any opportunity of defense, thus making the whole process nullity in the eye of law; that the appellant has not been treated in accordance with law and have condemned the appellant unheard, as no chance of personal hearing was afforded to him, nor he was given any chance to cross-examine witnesses or rebut the evidences leveled against him; that the respondents have misused their official authority in a very fanciful and arbitrary manner, which the law never approves of; that the appellant was acquitted of the criminal charges by the competent court of law vide judgment dated 03-05-2016 and there remains no reason to penalize the appellant for the charges, which has already been quashed by the competent court of law.

03. Learned Deputy District Attorney for the respondents has contended that the appellant was dismissed from service on the allegations of desecration of Holy Quran, for which he was charged in case FIR No. 687 dated 10-12-2013; that the appellant was acquitted by the court on technical grounds, however in departmental inquiry, the charges were established against him and he was dismissed from service after fulfilling all the formalities; that the de-novo proceedings were conducted as per

law and rule, wherein the allegations leveled against the appellant were proved; that the appellant was treated in accordance with law and was rightly penalized for the crime he committed.

04. We have heard learned counsel for the parties and have perused the record.

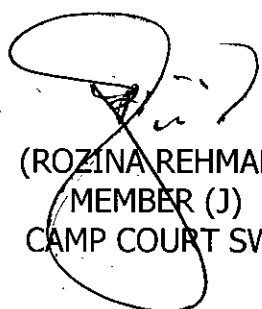
05. Record reveals that an FIR was registered against the appellant on the sensitive issue of desecration of Holy Quran allegedly committed by the appellant, who subsequently was arrested and tried in the criminal court. Simultaneously, the appellant was also proceeded against departmentally and was ultimately dismissed from service, against which the appellant filed service appeal and this Tribunal vide judgment dated 06-11-2017 had observed that no proper opportunity of defense was afforded to the appellant, hence the respondents were directed to conduct a de-novo inquiry and as a result of de-novo proceedings, the appellant was again dismissed from service vide order dated 28-12-2017. The appellant again knocked at the door of this Tribunal vide service appeal No. 415/2018 and this Tribunal once again remanded the case to the respondents to conduct inquiry in accordance with law vide judgment dated 04-04-2019 and as a result of de-novo inquiry, the appellant was again dismissed from service vide impugned order dated 15-07-2019, against which the appellant filed departmental appeal, which was accepted to the extent that major penalty of dismissal from service was converted into major penalty of removal from service vide impugned order dated 24-09-2019, hence the appellant filed the instant service appeal.


06. We have noted that the allegations so leveled against the appellant are factual in discourse, which cannot be proved without conducting a regular inquiry by affording proper opportunity of defense to the appellant as well as opportunity to cross-examine witnesses, which however was not done in case of the appellant. The

Supreme Court of Pakistan in its judgment reported as 2009 PLC (CS) 650 have held that regular inquiry is must before imposition of major penalty of removal from service. Placed on record is an inquiry report, which is replica of the previous proceedings and the allegations leveled against the appellant has not been proved, rather the inquiry officer has placed reliance on previous proceedings. We have also noted that the appellant was granted acquittal from the charges and the very reason, upon which the appellant was dismissed from service has vanished away, hence there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460.

07. In view of the foregoing discussion, the instant appeal is accepted and the appellant is re-instated in service. However the intervening period shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
05.10.2021


(ROZINA REHMAN)
MEMBER (J)
CAMP COURT SWAT


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)
CAMP COURT SWAT

ORDER

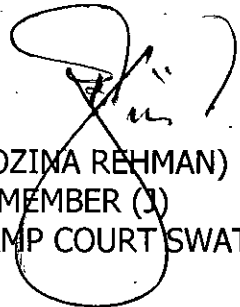
05.10.2021


Mr. Imdad Ullah, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted and the appellant is re-instated in service. However the intervening period shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

05.10.2021


(ROZINA REHMAN)
MEMBER (J)
CAMP COURT SWAT


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)
CAMP COURT SWAT

5.01.2021

Due to COVID 19, the case is adjourned to
2.03.2021 for the same as before.


Reader

02.03.2021

Appellant in person present.

Noor Zaman Khan Khattak learned District Attorney
alongwith Khawas Khan S.I for respondents present.

Lawyers community is on strike, therefore, case is
adjourned to 4/5/21 for arguments before D.B at
Camp Court, Swat.

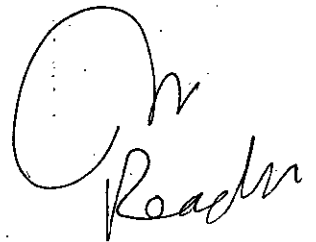


(Mian Muhammad)
Member (E)
Camp Court, Swat

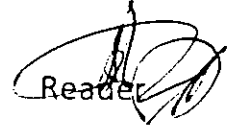


(Rozina Rehman)
Member (J)
Camp Court, Swat

*Due to covid 19 therefor to
come up for the same on 05/10/21*


Reader

_____ .2020 Due to COVID19, the case is adjourned to
5/10/2020 for the same as before.


Reader

05.10.2020

Appellant is present in person. Mr. Usman Ghani, District Attorney alongwith representative of the department Mr. Khawas Khan, S.I (Legal) are also present.

Representative of the department submitted para-wise reply on behalf of respondents No. 1 to 3 which is placed on record. File to come up for rejoinder and arguments on 03.11.2020 before D.B at Camp Court, Swat.



(MUHAMMAD JAMAL KHAN)
MEMBER
CAMP COURT SWAT


03.11.2020

Nemo for appellant.

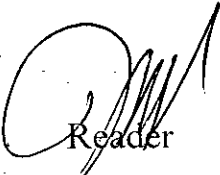
Muhammad Jan learned Deputy District Attorney alongwith Khawas Khan Inspector for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 05.01.2021 for arguments, before D.B at Camp Court, Swat.


(Atiq ur Rehman Wazir)
Member (E)
Camp Court, Swat

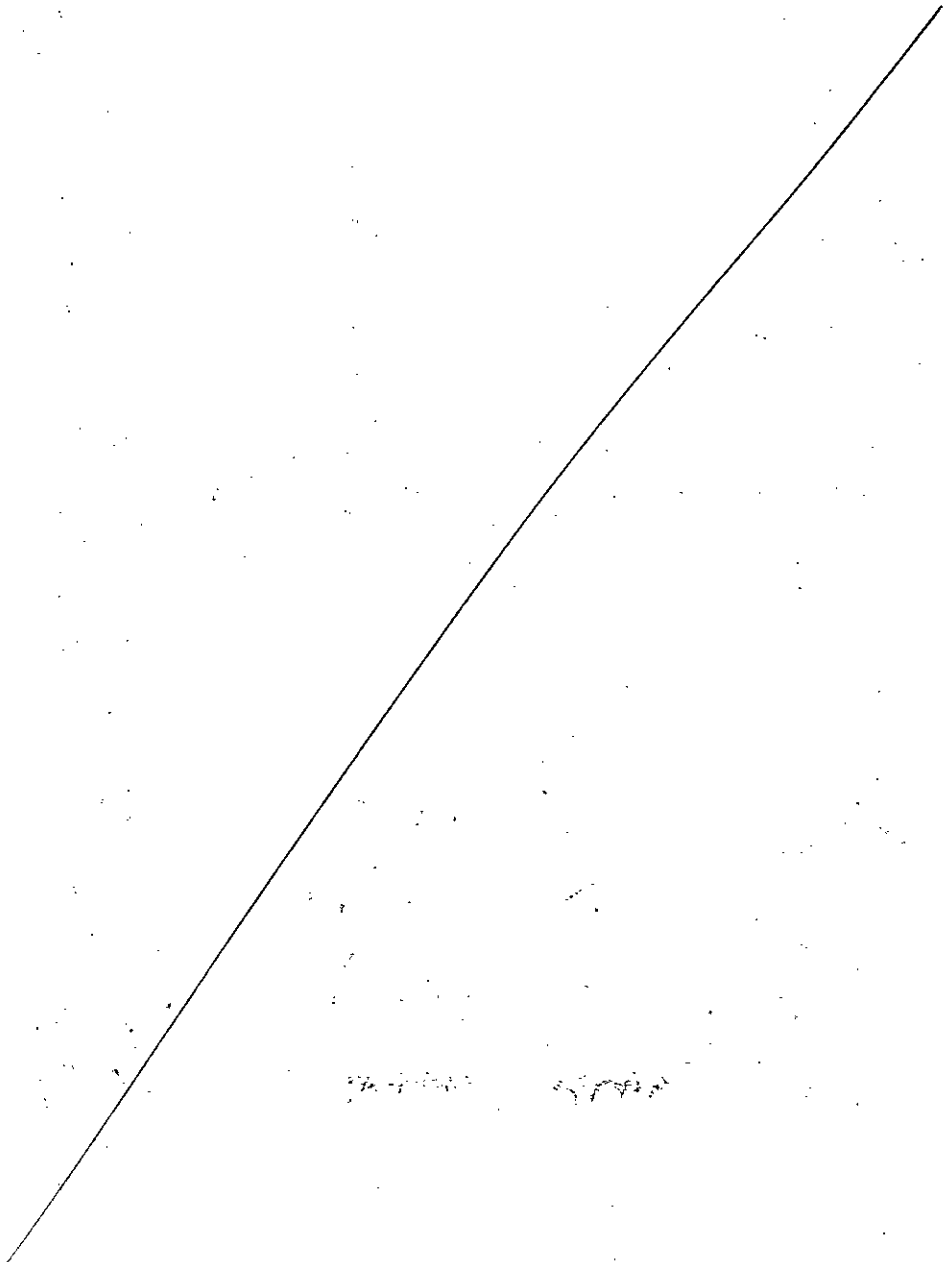

(Rozina Rehman)
Member (J)
Camp Court, Swat

03.06.2020 Due to Covid-19, the case is adjourned. To come up for the same on 06.07.2020 before SB at camp court Swat.


Reader


06.07.2020 Bench is incomplete. Therefore, the case is adjourned. To come up for the same on 06.08.2020, at camp court Swat.


Reader




06.01.2020

Appellant in person and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Mir Faraz, DSP (Legal) for the respondents present. Written reply on behalf of respondents not submitted. Representative of the department requested for further adjournment. Adjourned to 02.03.2020 for written reply/comments before S.B at Camp Court Swat.



(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

02.03.2020

Appellant in person present. Written reply not submitted. Khawas Khan S.I representative of respondent department present and seeks time to furnish reply. Granted. To come up for written reply/comments on 06.04.2020 before S.B at Camp Court Swat.


Member
Camp Court, Swat.

Due to corona virus tour to camp Court swat has been cancelled. To come for the same on- 01/06/20

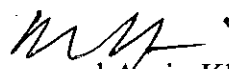

Reader

07.11.2019

Counsel for the appellant Aziz Ahmad present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was imposed major penalty of dismissal from service on the allegation of his desecration of Holy Quran. It was further contended that after availing departmental remedy, the appellant approached this Tribunal through service appeal, the service appeal of the appellant was partially accepted and the impugned order was set-aside, however, the department was directed to conduct de-novo inquiry vide detailed judgment dated 06.11.2017. After conducting de-novo inquiry, the appellant was again dismissed from service and after availing the departmental remedy, the appellant approached this Tribunal through service appeal and the service appeal of the appellant was again partially accepted vide detailed judgment dated 04.04.2019 with the direction to respondent-department to conduct again de-novo inquiry. It was further contended that again de-novo inquiry was conducted but the respondent-department has not conducted the de-novo inquiry as per direction of this Tribunal as well as in the mode and manners prescribed under the rules therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 06.01.2020 before S.B at Camp Court Swat.

Appellant Deposited
Security & Process Fee
21/11/19

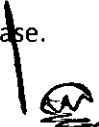

(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1213/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	01/10/2019	<p>The appeal of Mr. Aziz Ahmad presented today by Mr. Aziz-ur-Rehman Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 01/10/19</p> <p>This case is entrusted to touring S. Bench at Swat for preliminary hearing to be put up there on <u>07-11-2019</u></p> <p style="text-align: right;">CHAIRMAN</p>
2-		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1213 of 2019

Aziz Ahmad Ex-Constable No. 2658 Swat Police, District Swat.

...Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and Others.

...Respondents

INDEX

S.#	Description of documents	Annexure	Pages
1.	Memo of Petition	1-5
2.	Affidavit	6
3.	Addresses of the parties	7
4.	Copy of the Judgment dated 06-11-2017	A	8-10
5.	Copy of the Judgment dated 04-04-2019	B	11-14
6.	Copy of the Order dated 15-07-2019	C	15
7.	Copy of the Departmental Appeal	D	16-17
8.	Copy of the Order dated 24-09-2019	E	18
9.	Vakalat Nama	19

Appellant Through

SN Aziz-ur-Rahman

Advocate Swat

Office: Khan Plaza, Gulshone Chowk,
Mingora Swat, Cell 0333 929 7746

①

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 12/13 of 2019

Aziz Ahmad Ex-Constable No. 2658 Swat Police, District Swat.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1330

...Appellant Dated 01-10-2019

VERSUS

1. The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer Malakand at Saidu Sharif, District Swat.
3. The District Police Officer District Swat at Gulkada.

...Respondents

Filed to-day

Registrar

01/10/19

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER O.B. NO. 112 DATED 15-07-2019 WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE WAS IMPOSED UPON THE APPELLANT AGAINST THE LAW, RULES AND FACTS, HENCE IS LIABLE TO BE SET ASIDE, FEELING AGGRIEVED FROM THE SAME THE APPELLANT PREFERRED A DEPARTMENTAL APPEAL WHEREBY THE MAJOR PENALTY OF DISMISSAL WAS CONVERTED INTO REMOVAL FROM SERVICE VIDE NO. 10319/E DATED 24-09-2019, COMMUNICATED ON 27-09-2019, IN A SUMMARY

②

MANNER AGAINST THE LAW, RULES
AND FACTS AND IS ALSO LIABLE TO
SET ASIDE BEING NOT SUSTAINABLE.

PRAYER:

That on acceptance of this appeal both the orders impugned may very kindly be set aside and reinstate the appellant back into service with all back/consequential benefits.

Respectfully Sheweth:

Facts:

1. That the appellant was initially dismissed from service on alleged charges of being involved in case FIR No. 68 dated 10-12-2013, although in the same case the appellant was acquitted.
2. That against the same order the appellant exhausted his remedy up to this Honourable Tribunal vide Service Appeal No. 742 of 2016 decided vide judgment dated 06-11-2017, wherein the orders impugned therein were set aside and the case was sent back to the department for de novo enquiry, but strictly in accordance with the law. Copy of the Judgment dated 06-11-2017 is enclosed as Annexure "A".
3. That the respondent department without fulfilling the codal formalities and failing to conduct a full dressed enquiry as required under the law, again imposed the major penalty of dismissal from service

in a very arbitrary and fanciful manner vide order O.B. No. 211 dated 28-12-2017.

- 4. That feeling aggrieved of the same the appellant submitted a departmental appeal, but the same was also rejected vide order No. 2670/E dated 15-03-2018 in a very summary manner without adopting any of the codal formalities mandatory under the law and rules on the subject.*
- 5. That still feeling aggrieved and having no other option this Honourable Tribunal was approached in service appeal No. 415/2018, which was decided vide judgment dated 04-04-2109 and the respondents were directed strictly to follow the directions given therein. Copy of the judgment dated 04-04-2019 is enclosed as Annexure "B".*
- 6. That after conducting a shame, faulty and farce inquiry and not following the specific directions of this Honourable Tribunal the appellant was again imposed upon a major penalty of dismissal from service vide order O.B. No. 112 dated 15-07-2019 against the law, rules and facts and is liable to set aside. Copy of the order dated 15-07-2019 is enclosed as Annexure "C".*
- 7. That feeling aggrieved the appellant preferred a departmental appeal, but the same was dealt with in a mechanical manner and the penalty of dismissal from service was converted into that of removal from service vide order No. 10319/E dated 24-09-2019, communicated on 27-09-2019. Copy of the appeal is enclosed as Annexure "D" and that of the*

order dated 24-09-2019 is enclose as Annexure "E",
respectively.

④

8. That still feeling aggrieved and having no other quick and efficacious remedy available to the appellant this Honourable Tribunal is approached on the following grounds.

Grounds:

- a. That under the law for the imposition of major penalty a full fledge enquiry is mandatory under the law and rules on the subject, but in the instant case none of the codal formalities have been observed thus making the whole process a nullity in the eyes of law and the same the appellant has not been treated in accordance with the law.
- b. That the respondents have condemned the appellant as unheard as neither any chance of personal hearing was afforded to the appellant nor was the appellant given any chance either to cross examine the witnesses or rebut the evidence used against him. Moreover no show cause notice, if any, has neither been issued nor ever been served upon the appellant.
- c. That the respondents have misused their official authority in a very fanciful, arbitrary and colourful manner, which the law never approves of.

d. That the appellant has never committed any act of commission or omission which may constitute any offence under any law.

It is, therefore, very respectfully prayed that on acceptance of this appeal both the orders impugned may very kindly be set aside and the appellant reinstated back into service with all back/consequential benefits.

Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly be granted.

Aziz

Appellant

Aziz Ahmad

Through Counsels,

Aziz-ur-Rahman

Imdad Ullah

Advocates Swat

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____ of 2019

Aziz Ahmad Ex-Constable No. 2658 Swat Police, District

Swat.

...Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa,

Peshawar and Others.

...Respondents

AFFIDAVIT

It is solemnly stated on Oath that all the contents of
this service appeal are true and correct to the best of my
knowledge and belief and nothing has either been
misstated or kept concealed before this Honourable
tribunal.

Deponent

Aziz

Aziz Ahmad

Identified By:

Ullah
Imdad Ullah

Advocate Swat

ATTESTED

Ullah

UMAR SADIO Advocate,
OATH COMMISSIONER

DIST: Courts Swat.

No. 291 Date 30/09/19

(7)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2019

Aziz Ahmad Ex-Constable No. 2658 Swat Police, District
Swat.

... Appellant

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar and Others.

... Respondents


ADDRESSES OF THE PARTIES

Appellant:

Aziz Ahmad Ex-Constable No. 2658 Swat Police, District
Swat.

Respondents:

1. The Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar.
2. The Regional Police Officer Malakand at Saidu
Sharif, District Swat.
3. The District Police Officer District Swat at
Gulkada.

Appellant
Through Counsel,

Imdad Ullah
Advocate Swat

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT



8

Service Appeal No 742/2016

Date of Institution... 21.07.2016

Date of decision... 06.11.2017

Aziz Ahmad, Ex-Constable No. 2658, Javed Iqbal Shaheed Police Lines, District Swat. ... (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others. ... (Respondents)

MR. IMDADULLAH,
Advocate

... For appellant.

MIAN AMIR QADAR,
District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD HAMID MUGHAL,

... CHAIRMAN
... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service on 09.01.2015. The charge against the appellant was desecration of Holy Quran. A criminal case was also registered against the appellant and the appellant was arrested in that criminal case in December, 2013. During the pendency of the criminal case, the department initiated departmental proceedings by appointing enquiry officer and finally dismissing the appellant. In the criminal case, the appellant was acquitted by the Worthy Peshawar High Court on 03.05.2015. After the release from the Prison, the appellant filed a departmental appeal bearing no date, however, the same was

ATTESTED

Reshe
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Camp Court, Swat

ATTESTED

Reshe
ADVOCATE

rejected on 01.07.2016 and thereafter, the appellant filed the present service appeal on 21.07.2016.

ARGUMENTS

3. The learned counsel for the appellant argued that the appellant has been acquitted by the Worthy Peshawar High Court as no proof was forthcoming against the appellant. That the whole departmental proceedings against the appellant are illegal as at the time when the alleged charge sheet and statement of allegations were issued, the appellant was in jail in criminal case. That this fact has been admitted by the enquiry officer in his enquiry report. That when the appellant was behind the bar how he could be associated in the enquiry proceedings. He further argued that no limitation would run against the appellant as he was in prison and no communication of even final order was made to the appellant.

4. On the other hand the learned District Attorney argued that there is no proof of the fact that the appellant was in jail at the time when the enquiry proceedings were initiated and concluded that the allegation of desecration of Holy Quran was proved against the appellant.

CONCLUSION

5. In the report of the enquiry officer it is clearly written that the appellant was arrested on 12.12.2013 and thereafter his application for bail was rejected on 19.12.2013. In the order of the Worthy Peshawar High Court it is clearly mentioned at the end that the appellant be '*set free*' which means that the appellant was in the custody till 03.05.2016. There is no proof of any communication of the charge sheet and statement of allegations to the appellant nor the appellant was associated with the enquiry as he was in jail. But this is also an admitted position of law that acquittal in criminal case *per se* is no ground for setting aside the

EXAMINER
Member Peshawar High Court, Swat

ATTESTED

[Signature]

ADVOCATE

92
10

departmental penalty because under the well established jurisprudential principles of administrative law the findings of the criminal case has got no bearing on the departmental proceedings. In this regard, reliance is placed on 1972-SLR-Supreme Court-355, 1978- ALR 1963-Supreme Court-1723, 1978- SLR-Supreme Court-46 and PLD 1990-Supreme Court-951. This Tribunal, therefore, cannot give clear chit to the appellant on the ground that the Worthy Peshawar High Court has acquitted the accused, however, the departmental proceedings are defective as discussed above.

6. In the light of the above discussion, this Tribunal set aside the impugned order of the departmental authority and direct the authority to hold denovo enquiry in accordance with law and rules and to conclude the same within a period of four months from the date of receipt of this judgment, failing which the appellant shall be reinstated in service. Parties are left to bear their own costs. File be consigned to the record room.

Sd-
(Muhammad Hamid Mughal)
Member

Sd-
(Niaz Muhammad Khan)
Chairman
Camp Court, Swat

ANNOUNCED
06.11.2017

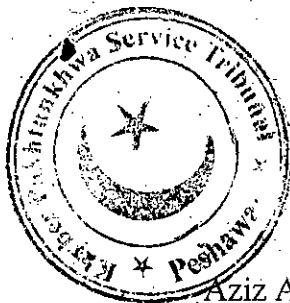
Certified to be true copy
Sd-
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Camp Court, Swat

Date of Presentation of Application 7-11-17
Number of Vols 1200
Copying Fee 800
800
Date of Presentation of Copy 9-11-17
Date of Delivery of Copy 9-11-17

ATTESTED
Sd-
ADVOCATE

Annexure B

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT SWAT**



SERVICE APPEAL NO. 415/2018

Date of institution ... 27.03.2018

Date of judgment ... 04.04.2019

Aziz Ahmed Ex-Constable No. 2658 Swat Police, District Swat.

... (Appellant)

VERSUS

1. The Provincial Police officer Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer Malakand at Saidu Sharif, District Swat.
3. The District Police Officer District Swat at Gulkada.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER O.B. NO. 211 DATED 28.12.2017 WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE WAS IMPOSED UPON THE APPELLANT AGAINST THE LAW, RULES AND FACTS, HENCE IS LIABLE TO BE SET-ASIDE, FEELING AGGRIEVED FROM THE SAME THE APPELLANT PREFERRED A DEPARTMENTAL APPEAL WHICH WAS ALSO DISMISSED VIDE NO. 2670/E DATED 15.03.2018 IN A SUMMARY MANNER AGAINST THE LAW, RULES AND FACTS AND IS ALSO LIABLE TO SET-ASIDE BEING NOT SUSTAINABLE.

ATTESTED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Mr. Imdad Ullah, Advocate.

.. For appellant.

Mr. Mian Ameer Qadir, District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

Mr. MUHAMMAD HAMID MUGHAL

.. MEMBER (JUDICIAL)

ATTESTED

JUDGMENT

Sheikh
ADVOCATE

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Learned counsel

for the appellant present. Mr. Mian Ameer Qadir, District Attorney alongwith Mr. Khawas Khan, S.I (Legal) for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department as Constable. He was imposed major penalty of dismissal from service by the competent authority on the allegation of

deseccration of Holy Quran. A criminal case was also registered against the appellant in this regard, after rejection of departmental appeal, the appellant filed service appeal before this Tribunal which was partially accepted vide judgment dated 06.11.2017, the impugned order of dismissal from service of the appellant was set-aside and directed the authority to hold de-novo inquiry in accordance with law and rules and to conclude the same within a period of four months from the date of receipt of judgment, failing which the appellant shall be deemed reinstated in service. After disposal of service appeal, de-novo inquiry was conducted and after de-novo inquiry the appellant was again dismissed from service by the competent authority on the basis of de-novo inquiry vide order dated 28.12.2017. The appellant filed departmental appeal on 08.01.2018 but the same was also rejected vide order dated 15.03.2018 hence, the present service appeal on 27.03.2018.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Police Department. It was further contended that the appellant was imposed major penalty of dismissal from service by the competent authority on the allegation of deseccration of Holy Quran. It was further contended that a criminal case was also registered in this regard but the appellant was acquitted by competent ^{Court in} authority in the criminal case. It was further contended that earlier the appellant had filed service appeal in this Tribunal against the impugned order which was partially accepted and the respondent-department was directed to conduct de-novo inquiry in accordance with law and rules but again neither charge sheet, statement of allegation was framed and served upon the appellant nor statement of witnesses were recorded in the presence of the appellant by the inquiry officer nor opportunity of cross examination was provided to the appellant on the witnesses nor opportunity of personal hearing was provided to

ATTESTED

EXAMINER

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

M. Anwar
4.4.2019

ATTESTED

[Signature]

ADVOCATE

the appellant by the competent authority before passing the impugned order therefore, the appellant was condemned unheard. It was further contended that the competent court has also acquitted the appellant in the criminal case therefore, it was contended that the impugned order passed by the competent authority as well as departmental authority after conducting de-novo inquiry is liable to be set-aside and prayed for acceptance of appeal with all back benefits.

5. On the other hand, learned District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that all the codal formalities were fulfilled in the de-novo inquiry before passing the impugned order. It was further contended that the charges leveled against the appellant was proved by the respondent-department in the de-novo inquiry therefore, the competent authority has rightly dismissed the appellant from service and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department. Departmental proceeding was initiated on the allegation of desecration of Holy Quran and a criminal case was also registered against the appellant by the local police but he was acquitted by the competent court in criminal case. The record further reveals that after initiating department proceeding, the appellant was dismissed from service by the competent authority on the allegation of desecration of Holy Quran and after rejecting the departmental appeal, the appellant filed service appeal before this Tribunal which was partially accepted and the respondent-department was directed to conduct de-novo inquiry in accordance with law and rules vide judgment dated 06.11.2017. However, the record reveals that the respondent-department has not conducted the de-novo inquiry as per direction of this Tribunal as neither charge sheet, statement of allegation was framed by the competent authority in the de-

novo inquiry nor any reply of the charge sheet, statement of allegation was requisitioned from the appellant. The record further reveals that the inquiry

ATTESTED

EXAMINER

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

M. Amin
4.4.2019

ATTESTED

[Signature]
ADVOCATE

officer has also recorded the statement of witnesses during the inquiry proceeding but the same was not recorded in the presence of the appellant nor the appellant was provided opportunity of cross examination on the said witnesses. Same way after submitting inquiry report, the competent authority has again dismissed the appellant from service but the impugned order dated 28.12.2017 regarding the dismissal of the appellant from service does not show that the appellant was given opportunity of personal hearing before passing the impugned order. Same way after submitting inquiry report, the competent authority was required to issue final shown-cause notice alongwith copy of inquiry report to the appellant but neither any show-cause notice was issued to the appellant nor any reply of the show-cause notice was requisitioned from the appellant therefore, the appellant was again condemned unheard. Therefore, we are constrained to partially accept the present service appeal, set-aside the impugned orders and once again direct the respondent-department to conduct de-novo inquiry in accordance with rules prescribed by Police Rules, 1975 including framing of charge sheet, statement of allegation, requisition of reply from the appellant, opportunity of cross examination, defence, personal hearing, issuance of final show-cause notice alongwith copy of inquiry report to the appellant and requisition of reply of show cause notice from the appellant. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
04.04.2019

ATTESTED

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(MUHAMMAD HAMID MUGHAL)
MEMBER
CAMP COURT SWAT

[Signature]
ADVOCATE

[Signature]
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT SWAT

Certified *[Signature]* true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 16-4-2019
Number of Words 37-00
Copy of Report 10-00
Urgent 7-00
Total 12-00
Name of Applicant [Signature]
Date of Completion of Copy 16-4-2019
Date of Delivery of Copy 16-4-2019

Annexure C^v

15

ORDER

This order will dispose of Denove Departmental enquiry against Constable Aziz Ahmad No. 2658/1225 (re-instated in service for the purpose of Denove Departmental Enquiry). He while posted to Police Lines Kabal was alleged of gross misconduct as he had remained involved in case FIR No. 687, dated 10-12-2013 u/s 295-B PPC of Police Station Saidu Sharif.

He was proceeded against departmentally and subsequently dismissed from service vide this office OB No. 07 dated 09-01-2018. He had preferred an appeal before the Service Tribunal which vide judgment No. 611/2017 had set aside the punishment and ordered a denove departmental enquiry against the Constable under discussion. In compliance of the directives of the Honorable Service Tribunal an enquiry was carried out against him and he was against dismissed from service vide this office OB No. 211 dated 28-12-2017. He yet again moved the Service Tribunal and the Honorable Tribunal re-instated the Constable with the rider that a denove departmental enquiry be conducted in Service Appeal No. 915/2018. Consequently an enquiry was ordered against him and acting District Complaint Officer Mr. Ahjaz Ahmad was directed to carry out denove departmental enquiry against the delinquent Constable. The Enquiry Officer reported that the provisionally re-instated Police Officer remained involved in desecration of the Holy Pages which was resented widely by the public. The Enquiry Report further revealed that the Constable under enquiry also seemed a psychiatric patient and recommended dismissal of the concerned Police Officer.

The delinquent Constable had torn out and desecrated pages of the Holy Quran which was bitterly resented by the public and had brought a bad name for Police department. He was subsequently charged under relevant Sections and he had got life term after being tried by the court of Addl: Sessions Judge Swat. He was later acquitted by Peshawar High Court Mingora Bench Swat and two times reinstated by the Honorable Service Tribunal as discussed above. His further retention in Police is bound to invite public resentment and outrage. It has also been learnt that the Constable has got mental complications. In both cases the Constable is unfit for Police service. His reinstatement will have multiple ramifications and bound to badly affect routine affairs of Police department. Hence, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules – 1975, I Syed Ashfaq Anwar, PSP, District Police Officer, Swat being competent authority, am constrained to again award him major punishment of dismissal from service.

Order announced.

District Police Officer
Swat

O.B. No. 112

Dated: 15-7-19

Attention to
The →

Copy to:-

1. ✓ AIG/C&E Internal Accountability Branch, Khyber Pakhtunkhwa, Peshawar with reference to CPO office Memo: No. 2347/CPOIAB/C&E, dated 01-07-2019 please.
2. Establishment Clerk
3. OSI

For necessary action, please.

ATTESTED

[Signature]
ADVOCATE

District Police Officer
Swat

[Large handwritten signature]

BEFORE THE REGIONAL POLICE OFFICER MALAKAND RANGE SAIDU SHARIF

Aziz Ahmad Ex-Constable No. 2658/1225 Swat District.Appellant

Versus

The District Police Officer District Swat.Respondent

Departmental appeal against the order OB No. 112 dated 15-07-2019, communicated on 19-07-2019.

Prayer:

On Acceptance of this departmental appeal the order OB No. 112 dated 15-07-2019 be set aside and the appellant reinstated with back benefits.

Respected Sir,

The appellant submits as under,

That the appellant joined the police force in the year 2009 and from that time has performed his duties regularly and with no complaints.

That the appellant was allegedly involved in a criminal case FIR No. 687 dated 10-12-2013 u/s 295B PPC and was dismissed from service.

That the appellant was acquitted by the Honourable Peshawar High Court, Mingora Bench, Dar-ul-Qaza Swat by judgment dated 03-05-2016 in the criminal case.

That the appellant filed departmental appeal and finally filed service appeal 742/2016 in Service Tribunal which decided on 06-11-2017 by reinstating the appellant and directed the department to conduct de novo inquiry in accordance with the law and rules.

That the de novo inquiry was conducted but no charge sheet or show cause notice was issued to the appellant and the directions of the Honourable Service Tribunal were not followed.

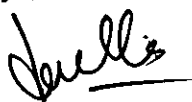
That no personal hearing was given to appellant under the rules.

That the appellant is condemned as unheard.

That at the end of the faulty inquiry the appellant was again dismissed from service vide order O.B. No. 211 dated 28-12-2017.

That the appellant preferred a departmental appeal and it was also rejected by order 2670/E dated 15-03-2018.

That the appellant again filed a service appeal 415/2018 in Service Tribunal and the appellant was again reinstated into service by judgment dated 04-04-2019 again with the direction to conduct proper de novo inquiry strictly according to law and rules.

ATTESTED

ADVOCATE

That again a faulty inquiry was conducted and the appellant was neither issued charge sheet nor any show cause notice and finally the appellant was again dismissed from service by order O.B. No. 112 dated 15-07-2019.

That the de novo inquiry is conducted not according to the directions of the Honourable Service Tribunal and is faulty.

The appellant was also not heard in person and is condemned as unheard.

That the appellant has not committed any act criminal and was falsely involved in the FIR and the appellant is acquitted in the criminal case.

That any inquiry if conducted the copy of the same is not provided to the appellant.

It is very humbly requested that on acceptance of this departmental appeal the appellant reinstated into service with all back benefits.

Aziz Ahmad
Appellant 22-7-19

Aziz Ahmad

Affidavit

It is solemnly stated on oath that all the contents of this departmental are true and correct.

Aziz Ahmad
Deponent 22-7-19

Aziz Ahmad

CH/0346-9488547

ATTESTED " *0323-1913443*

Umar Sadiq
UMAR SADIQ Advocate,
OATH COMMISSIONER
Dist: Courts Swat.
No. 96 Date: 22/7/19

ATTESTED
[Signature]
ADVOCATE



Annexure ²E

18

OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND
SAIDU SHARIF SWAT.
Ph: 0946-9240381-88 & Fax No. 0946-9240390
Email: digmalakand@yahoo.com

ORDER:

This order will dispose off appeal of Ex-Constable Aziz Ahmad No. 2658/1225 of Swat District for reinstatement in service.

Brief facts of the case are that Ex-Constable Aziz Ahmad No. 2658/1225 while Posted to Police Lines Kabal was alleged of gross misconduct as he remained involve in case FIR No. 687 dated 10/12/2013 u/s 295-B PPC PS Saidu Sharif Swat. Consequently he was proceeded against departmentally and subsequently dismissed from service vide OB No. 7 dated 09/01/2015. Later on he preferred service appeal before the Service Tribunal Khyber Pakhtunkhwa Peshawar where the Service Tribunal Khyber Pakhtunkhwa Peshawar vide judgment dated 06/11/2017 has set aside his punishment and ordered for Denovo departmental enquiry against the said Constable. In compliance of directions of the Honorable Service Tribunal an enquiry was carried out against the delinquent Constable and he was again dismissed from service vide DPO Swat Office OB No. 211 dated 28/12/2017. Thereafter, he preferred another Service Appeal in Khyber Pakhtunkhwa Service Tribunal, Peshawar and the Honorable Tribunal re-instated the delinquent Constable with the direction to conduct proper Denovo departmental enquiry. In compliance Mr. Ahjaz Ahmad Acting District Complaint Officer/ SP, Investigation Swat was directed to carry out Denovo departmental enquiry against the delinquent Constable. The enquiry officer Mr. Ahjaz Khan, SP Investigation Swat after conducting proper enquiry submitted his report stated therein that the provisionally re-instated Police Officer remained involved in desecration of the Holy pages which was resented widely by the general public. The enquiry report further revealed that the Constable under enquiry was also seemed to be a psychiatric patient, hence recommended his dismissal from service. The delinquent Constable had torn out and desecrated pages of the Holy Quran which was bitterly resented by the public which brought a bad name for Police department. He was subsequently charged under relevant sections and he had got life term after being tried by the Court of Addl. Session Judge Swat. He was later on acquitted by Peshawar High Court Mingora Bench Swat and two times reinstated by the Honorable Service Tribunal as discussed above. His further retention in Police is bound to invite public resentment and outrage. It has also learnt that the Constable has got mental complications. In both cases the Constable is unfit for Police Service. His reinstatement will have multiple ramifications and bound to badly affect routine affairs of Police Department. Therefore, being found guilty of the charges levelled against him, the District Police Officer, Swat awarded him major punishment of dismissal from service vide his office OB No. 112 dated 15/07/2019.

He was called in Orderly Room on 17/09/2019 and heard him in person. The appellant could not produce any cogent reason in his defence. However, his punishment of dismissal from service is converted to removal from service.

Order announced.

(MUHAMMAD IJAZ KHAN), PSP
Regional Police Officer,
Malakand Region, Saidu Sharif Swat

No. 10319 /E,

Dated 26/09 2019.

Copy of above for information and necessary action to District Police Officer, Swat with reference to his office Memo: No. 12451/E, dated 06/08/2019. Service Roll and Fauji Missal of the above named Constable is returned herewith for record in your office.

ATTESTED

ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

19

In matter of:-

Aziz-Ahmad

Appellant

VERSUS

The P^o etc.

Respondent

KNOWN ALL to whom these present shall come that I/we, the undersigned appoint

AZIZ-UR-RAHMAN and IMDAD ULLAH

Advocates High Court

To be the advocate for the Appellant in the above mentioned case to do all the following acts, deeds and things or any one of them, that is to say:-

- ❖ To acts, appear and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or revision or execution or at any other stage of its progress until its final decision.
- ❖ To present pleadings, appeals, cross objections or petitions for execution review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- ❖ To withdraw or compromise the said or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- ❖ To receive money and grant receipts therefore, and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- ❖ To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate wherever he may think fit to do so.
- ❖ I understand that the services of aforesaid lawyer are hired irrespective of the outcome of the case.

And I/We hereby agreed to ratify whatever the advocate or his substitute shall to do in the said premises.

And I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the Court when the said case is called up for hearing.

And I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, the Advocate shall be entitled to withdraw from the prosecution of the case until the same is paid.

IN THE WITNESS WHEREOF I/WE hereunto set my/our hand(s) to these present the contents of which have been explained to and understood by me/us, this 28 day of 08 2019.

Aziz

(Signature or thumb impression)

(Signature or thumb impression)

(Signature or thumb impression)

Accepted subject to terms regarding fees

Aziz
(AZIZ-UR-RAHMAN)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk
G.T. Road Mingora, District Swat.
Cell No. 0300 907 0671

Imdad

Imdad
(IMDAD ULLAH)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk,
G.T. Road, Mingora, District Swat
Cell No. 0333 929 7746

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1213/2019

Aziz Ahmed Ex-Constable No.2658 Swat Police, District Swat.

..... Appellant

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, at CPO Peshawar.
2. The Regional Police Officer Malakand at Saidu Sharif, District Swat.
3. The District Police Officer Swat.

....Respondents

INDEX

S.No:	Description of Documents	Annexure	Page
1	Para-wise Comments	-	1-3
2	Affidavit	-	4
3	Authority Letter	-	5


District Police Officer, Swat
(Respondent No. 3)

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1213/2019

Aziz Ahmed Ex-Constable No.2658 Swat Police, District Swat.

..... Appellant

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, at CPO Peshawar.
2. The Regional Police Officer Malakand at Saidu Sharif, District Swat.
3. The District Police Officer Swat.

....Respondents

PARAWISE REPLY BY RESPONDENTS

Respectfully Shewith,

PRELIMINARY OBJECTIONS.

1. That the appeal is badly barred by Law & limitation.
2. That the appellant has got no Cause of action and locus standi to file the present appeal.
3. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
4. That the appellant has not come to the Tribunal with clean hands.
5. That the instant appeal is not maintainable in its present form.
6. That the appellant has concealed the material facts from this Hon'ble Tribunal.

FACTS:

1. Correct to the extent the appellant was dismissed from service on allegation of desecration of Holy Quran for which he was charged in case FIR No.68 dated 10/12/2013. He was acquitted by the Court on technical grounds, however in departmental probe the charges were established and he was dismissed from service after fulfilling all codal formalities.
2. Incorrect. In compliance with order of the honorable Court, a full fledged denovo enquiry was conducted against the appellant as per law/rules, wherein the allegation leveled against the appellant were proved.

- 2
3. Incorrect. As stated above, in compliance of the directions of honorable Tribunal, proper denovo departmental enquiry was conducted against the appellant, wherein after completing all codal formalities he was awarded appropriate punishment.
 4. Incorrect. Departmental appeal of the appellant was thoroughly examined by the respondents and after taking lenient view the same was filed as the appellant failed to produce any cogent reason in his defence.
 5. The directions of the honorable Tribunal were followed by the respondents in letter and spirit and in accordance with law/rules
 6. Incorrect. As stated above, in compliance of the directions of the honorable Tribunal, proper denovo departmental enquiry was conducted against the appellant and the District Complaint Officer, Swat was appointed as Enquiry Officer, who after completing the enquiry submitted his finding report stated therein that the appellant was involved in desecration of pages of holy Quran which was widely resented by the public, hence he was recommend for major punishment by the Enquiry Officer.
 7. Pertains to record. No irregularity in enquiry proceedings was found. Appeal of the appellant was not cogent, hence dismissed by appellate authority in accordance with rules.
 8. The appellant has wrongly challenged the legal and valid order of respondents before this honorable Court through unsound grounds.


GROUNDS:


- a. Incorrect. The appellant has been treated in accordance with law/rules by providing all the opportunities of personal hearing and defence to the appellant during course of departmental probe.
- b. Incorrect. All the codal formalities have been fulfilled during the course of enquiry and opportunities of self defence and personal hearing have also been provided to the appellant.

- c. Incorrect. The respondents have acted in accordance with law/ rule and all the codal formalities under the law have been fulfilled during the course of enquiry.
- d. Incorrect. As stated above, the order of the appellate authority is legal, reasonable and is based on facts and justice.
- e. Incorrect. The appellant has committed serious offence i.e desecration of the pages of Holy Quran which has been established during course of criminal investigation as well as in departmental probe.

PRAYER:

Keeping in views the above facts and circumstances, it is humbly prayed that the appeal of appellant being devoid of legal force may kindly be dismissed with costs.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.01)


Regional Police Officer,
Malakand Region
(Respondent No.02)


District Police Officer Swat
(Respondent No.03)

Service Appeal No. 1213/2019

Aziz Ahmed Ex-Constable No.2658 Swat Police, District Swat.

..... Appellant


VERSUS


1. The Provincial Police Officer, Khyber Pakhtunkhwa, at CPO Peshawar.
2. The Regional Police Officer Malakand at Saidu Sharif, District Swat.
3. The District Police Officer Swat.

....Respondents

AFFIDAVIT

We, the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of our knowledge/ belief and nothing has been kept secret from the honorable Tribunal.


**Provincial Police Officer
Khyber Pakhtunkhwa Peshawar
(Respondents No.1)**


**Regional Police Officer,
Malakand at Saidu Sharif
Malakand Region
(Respondents No.2)**


**District Police Officer, Swat
(Respondents No.3)**

Service Appeal No. 1213/2019

Aziz Ahmed Ex-Constable No.2658 Swat Police, District Swat.

..... Appellant


VERSUS

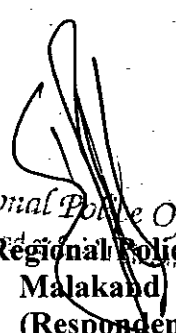
1. The Provincial Police Officer, Khyber Pakhtunkhwa, at CPO Peshawar.
2. The Regional Police Officer Malakand at Saidu Sharif, District Swat.
3. The District Police Officer Swat.

....Respondents

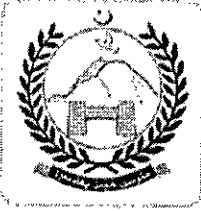
AUTHORITY LETTER

We, the above respondents do hereby authorized Mr. Mir Faraz Khan DSP/Legal Swat & Mr. Khawas Khan SI Legal to appear before the Tribunal on our behalf and submit reply etc in connection with titled Service Appeal.


**Provincial Police officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)**


**Regional Police Officer,
Malakand Region
Malakand Region
(Respondent No. 2)**


**District Police Officer Swat
(Respondent No. 3)**



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 2195 /ST

Dated: 03/11 /2021

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262


To

The District Police Officer Female,
Government of Khyber Pakhtunkhwa,
District Swat at Gulkada.

Subject: JUDGMENT IN APPEAL NO. 1213/2019, MR. AZIZ AHMAD.

I am directed to forward herewith a certified copy of Judgement dated 05.10.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR