

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT  
CAMP COURT SWAT

Service Appeal No. 1723/2022

BEFORE: MR. SALAH UD DIN ... MEMBER (Judicial)  
MRS. RASHIDA BANO ... MEMBER (Judicial)

Umar Rehman Ex-FC NO. 5605, District Buner.  
.... (Appellant)

VERSUS

1. Inspector of Police Khyber Pakhtunkhwa, Peshawar.
2. AIG Elite Force, Khyber Pakhtunkhwa, Peshawar.
3. Additional Inspector General of Police Elite Force, Khyber Pakhtunkhwa, Peshawar.
4. Deputy Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Umar Farooq Mohmand  
Advocate ... For appellant

Mr. Asad Ali Khan  
Assistant Advocate General ... For respondents

Date of Institution.....30.11.2022  
Date of Hearing.....03.01.2024  
Date of Decision.....03.01.2024

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 instant appeal, the impugned order dated 14.06.2021 of Respondent No.4, and 08.02.2022 of respondent No.2 may very kindly be set aside and the appellant may be reinstated into service with all back benefits.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was enlisted as Constable in Elite Force, Police Department vide order dated 08.10.2008. During service the appellant was charged in FIR No. 145, dated



09.04.2021 under section 496-A PPC Police Station Swarit City Buner on the basis of which he was dismissed from service vide order dated 24.06.2021. Feeling aggrieved, he filed departmental appeal, which was not responded, 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 Assistant Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that order passed by the respondents is against the law, facts and norms of natural justice, hence not tenable and liable to be set aside. He further argued that no charge sheet, statement of allegation, show cause notice has been issued to the appellant nor chance of personal hearing has been provided to him. He further argued that no regular inquiry has been conducted against him. He submitted that respondents removed the appellant in a hasty manner without waiting for the outcome of the trial which was pending before the competent court of law at that relevant time.


5. Conversely, learned Assistant Advocate General for the respondent contended that the appellant has been treated in accordance with law and rules. He further contended that appellant was involved in criminal case under section 496-A PPC which fall within the ambit of immoral turpitude and was absent from lawful duty w.e.f 06.04.2021 without any leave or prior permission on the basis of which appellant was dismissed from service.

6. Perusal of record reveals that appellant was enlisted as constable vide order dated 08.10.2008 and performing duty with full devotion and upto the entire satisfaction of his superior till 09.04.2021, when he was involved in a criminal case



bearing FIR No. 145 dated 09.04.2021 PPC of Police Station Swarit City Buner. The appellant was departmentally proceeded by issuing charge sheet and statement of allegation on 13.04.2021 by the competent authority and who appointed Mr. Fahad Khan, Acting DSP as Enquiry Officer. Appellant was summoned by the enquiry officer, who appeared and show his ignorance from the factum of abduction of Mst. Nihar Bibi and also took the stance that Mst. Nihar Bibi in her 164 statement has not charge him rather she had stated that upon her own sweet will being *sui juris*, she had left the house of her father as she does not want to marry his fiancée Mr. Sami Ullah. It is also pertinent to mention here that enquiry officer has not recorded statement of any witness i.e complainant of FIR No. 145 alleged abductee Mst. Nihar Bibi or anyone else except Investigation Officer, Rehman Wali who also stated that earlier Saiful Islam Khan, ASI conducted inquiry wherein complainant of the case FIR No. 145 Mir Zada recorded his statement under Section 164 before Senior Civil Judge and charged appellant for the alleged commission of offence. No chance of cross examination was provided to the appellant to cross examine the investigating officer, Wali Rehman, ASI which is essence of a fair trial and enquiry. So appellant was condemned unheard and he awarded major penalty of dismissal from service vide impugned order dated 24.06.2021.

7. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service, 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 alteram 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.

8. It is also pertinent to mention here that appellant was acquitted from the charges vide order dated 24.01.2022 by Senior Civil Judge, Buner at Daggar under section 249-A Cr.PC on the ground that nikah of Mst. Nihar Bibi was not contracted with Sami Ullah rather only engagement ceremony was conducted. Similarly, rukhsati had also not taken place because complainant of the FIR categorically mentioned in his court statement that nikah of Mst. Nihar bibi with Sami Ullah was not performed. Similarly, deed annexed with the appeal dated 01.11.2019 also reveals that in fact it was an agreement in respect of dower and dowry article which bridegroom was to arrange at the time of nikha/marriage, which means that on 01.05.2019 only engagement ceremony was taken place and not nikah of Mst. Nihar Bibi with Sami Ullah as is alleged in the FIR.

9. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Conviction of the appellant in criminal case was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service.

10. It is established from the record that charges of his involvement in criminal case ultimately culminated in honorable acquittal of the appellant by the competent



court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

11. For what has been discussed above, the appeal in hand is accepted as prayed for. Costs shall follow the event. Consign.

12. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 3<sup>rd</sup> day of January, 2024.*



**(SALAH UD DIN)**  
Member (J)  
Camp Court, Swat



**(RASHIDA BANO)**  
Member (J)  
Camp Court, Swat

**ORDER**

03.01.2024

1. Learned counsel for the appellant present. Mr. Asad Ali Khan learned Assistant Advocate General alongwith Mr. Niaz Mohammad, DSP for the respondents present.
2. Vide our detailed judgement of today placed on file, the appeal in hand is accepted as prayed for. Costs shall follow the event. Consign.
3. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 3<sup>rd</sup> day of January, 2024.*



**(SALAH UD DIN)**  
Member (J)  
Camp Court, Swat



**(RASHIDA BANO)**  
Member (J)  
Camp Court, Swat