

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR AT CAMP COURT ABBOTTABAD

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

Service Appeal No. 943/2022

Aqibat Shah, Sub-Inspector No. 06/H Presently posted at Police
Training College, Hangu. (Appellant)

Versus

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 02
others. (Respondents)

Present:

Mohammad Aslam Tanoli, Advocate.....For the appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor respondents

Date of presentation of Appeal.....13.06.2022
Date of Hearing.....27.02.2024
Date of Decision.....27.02.2024

JUDGMENT

SALAH-UD-DIN, MEMBER: Precise facts giving rise to the instant appeal are that the appellant while posted as Sub-Inspector/Official Incharge Investigation in Police Station Kotnajibullah, was proceeded against departmentally on the allegations that he was involved in case FIR No. 162 dated 15.02.2018 under section 376 PPC registered at Police Station Sarai Saleh, Haripur; that his involvement in immoral and criminal activities amounted to misconduct due to which soft image and reputation of Police Department was defamed. On conclusion of the inquiry, the appellant was awarded major punishment of reduction in

rank from Sub-Inspector to Assistant Sub-Inspector vide order bearing OB No. 216 dated 03.04.2018 passed by District Police Officer, Haripur. The penalty so awarded to the appellant was challenged by him through filing of departmental appeal, which was disposed of vide order dated 09.10.2018 passed by Regional Police Officer Hazara Region Abbottabad, whereby the punishment awarded to the appellant was converted into another major punishment of reduction in pay by three years. The appellant after his acquittal in the concerned criminal case vide judgment dated 29.09.2021 passed by Additional Sessions Judge-I Haripur, filed another appeal before the Regional Police Officer Hazara Region Abbottabad, however the same was filed vide order dated 31.01.2022. The appellant then submitted revision petition before the Provincial Police Officer Khyber Pakhtunkhwa Peshawar, which was declined vide order dated 18.05.2022 being time barred. The appellant has now approached this Tribunal by filing of instant appeal for redressal of his grievance.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing reply/comments raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant argued that the appellant was falsely implicated in case FIR No. 162 dated 15.02.2018 under section 376 PPC registered at Police Station Sarai Saleh, Haripur. He next contended that the appellant has already been acquitted in the

afore-mentioned criminal case vide judgment dated 29.09.2021 passed by Additional Sessions Judge-I Haripur, therefore, the very ground, on the basis of which departmental action was taken against the appellant, has vanished away. He further contended that neither any witness was examined in presence of the appellant nor any opportunity of cross-examination was provided to the appellant. He next argued that neither any final show cause notice was issued to the appellant nor he was afforded any opportunity of personal hearing, therefore, the impugned orders are not sustainable in the eye of law.

4. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellant was proceeded against departmentally on the allegations of his involvement in case FIR No. 162 dated 15.02.2018 under section 376 PPC registered at Police Station Sarai Saleh, Haripur as well as his involvement in immoral and criminal activities, which has brought bad name to Police Department. He next contended that criminal as well as departmental proceedings can run parallel and mere acquittal of the appellant in the criminal case could not be considered as a ground for his exoneration from charges in the departmental proceedings. He further contended that the appellant was not acquitted on merit, rather he was acquitted by extending him the benefit of doubt, therefore, his acquittal would not make him entitled to exoneration in the departmental proceedings. He next argued that proper regular inquiry was conducted against the appellant by observing all legal and codal formalities and there exist no legal lacunae in the inquiry

proceedings. He further contended that the appellant filed departmental appeal, which was disposed of vide order dated 09.10.2018 passed by Regional Police Officer Hazara Region Abbottabad, whereby the punishment awarded to the appellant was converted into another major punishment of reduction in pay by three years, there-after filed another appeal before the Regional Police Officer Hazara Region Abbottabad, which is not permissible under the law however the same was filed vide order dated 31.01.2022. The appellant then submitted revision petition to the Provincial Police Officer Khyber Pakhtunkhwa Peshawar, which was declined vide order dated 18.05.2022 being time barred, therefore, the appeal in hand is not maintainable. In the last he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with costs.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The appellant was proceeded against departmentally on the allegations of his involvement in case FIR No. 162 dated 15.02.2018 under section 376 PPC registered at Police Station Sarai Saleh, Haripur. Muhammad Sabir Khan, the then DSP Headquarter Haripur was nominated as inquiry officer for conducting inquiry in the matter. The inquiry report submitted by the inquiry officer is available on the record, which would show that the complainant of the concerned criminal case was not examined by the inquiry officer. The inquiry officer had recorded statement of Bashir Khan SI, who was Investigation Officer of the concerned criminal case as well as

statements of Muhammad Anwar SI/OII, Constable Syed Waqas and Driver Abid, who were accompanying the appellant for duty on the relevant night. The inquiry officer has categorically mentioned in his inquiry report that in their statements recorded during the inquiry, Driver namely Abid as well as Constable Syed Waqas had mentioned that the allegations leveled against the appellant were false. It has further been mentioned by the inquiry officer in his report that in their statements recorded during the inquiry, Muhammad Anwar SI/OII as well as Bashir Khan SI/OII had stated that the charge leveled against the appellant were not proved during the investigation. It is thus crystal clear that none of the witnesses examined during the inquiry had supported the allegations leveled against the appellant. Similarly, the medical report of the complainant namely Mst. Balqees Bibi was also negative, which means that the allegations leveled against the appellant were not supported even by the medical evidence. It is thus not understandable as to what evidence was available before the inquiry officer for declaring the appellant guilty of the charge leveled against him.

7. The departmental appeal of the appellant was declined by Regional Police Officer Hazara Region Abbottabad vide order dated 09.10.2018. The appellant after his acquittal vide judgment dated 29.09.2021, submitted another appeal before Regional Police Officer Hazara Region Abbottabad, which was filed vide order dated 31.01.2022 on the ground that earlier appeal of the appellant had already been decided by Regional Police Officer Hazara Region Abbottabad. The appellant then submitted revision petition before

the Provincial Police Officer Khyber Pakhtunkhwa Peshawar. The revision petition was filed by the appellant beyond the period of limitation prescribed for filing of the same, however the said remedy was availed by the appellant after his acquittal in the concerned criminal case, therefore, the delay in filing of revision petition is condoned. Supreme Court of Pakistan in its judgment reported as PLD 2010 Supreme Court 695 has observed as below:-

"We may also observe in this context that the respondent had been acquitted in the criminal case on 22.09.1998 and he had filed his departmental appeal on 12.10.1998, i.e within three weeks of his acquittal in the relevant criminal case. It would have been a futile attempt on the part of the respondent to challenge his removal from service before earning acquittal in the relevant criminal case and, thus, in the peculiar circumstances of this case we have found it to be unjust and oppressive to penalize the respondents for not filing his departmental appeal before earning his acquittal in the criminal case which had formed the foundation for his removal from service." (Emphasis supplied).

8. In light of the above discussion, the appeal in hand is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

27.02.2024


(Kalim Arshad Khan)

Chairman
Camp Court Abbottabad




(Salah-Ud-Din)
Member (Judicial)
Camp Court Abbottabad


ORDER
27.02.2024

Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
27.02.2024


(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad


(Salah-Ud-Din)
Member (Judicial)
Camp Court Abbottabad