

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

Service Appeal No.7877/2021

BEFORE: MRS. RASHIDA BANO MEMBER (J)
MR. MUHAMMAD AKBAR KHAN MEMBER (E)

Mr. Haroon Shah S/O Rasool Shah, Ex-Constable No.625 of District Police, Mansehra R/o Village Bandi P.O Morbaffa Tehsil and District Mansehra.

.... (Appellant)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.

.... (Respondents)

Mr. Muhammad Aslam Tanoli
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....16.12.2021
Date of Hearing.....23.01.2024
Date of Decision.....23.01.2024

JUDGMENT

Rashida Bano, Member (J): The instant appeal instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of instant service appeal both the impugned orders dated 14.05.2008 and 08.11.2021 of the respondents may graciously be set aside and the appellant be reinstated in service from the date of dismissal with all consequential service back benefits.”



2. Brief facts of the case are that appellant was serving in the Police Department. That an FIR No.259 dated 06.04.2008 was registered against him. That due to enmity, he shifted to a far flung safe area due to which he could not join duty. That vide order dated 14.05.2008, he was dismissed from service. That he was arrested and tried by the Court and vide order dated 02.10.2021, he was acquitted by the Additional Sessions Judge-I Mansehra. That after release from jail, he preferred departmental appeal, which was filed vide order dated 08.11.2021. He therefore, filed the instant service appeal.

3. Respondents were put on notice who submitted reply/comments on the appeal. We have heard learned Deputy District Attorney and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant argued the impugned order was illegal, unlawful, against law and rules. He submitted that proper inquiry had not been conducted by the respondents and no charge sheet and show cause notice had been served upon the appellant. Further submitted that the authority was bound to have waited for the decision of criminal case of the appellant but they had failed to do so; that the respondents had violated Article 10-A of the Constitution of Islamic Republic of Pakistan. Lastly, he submitted that the appellant was not willfully absent from service, rather due to registration of FIR he was unable to join duties. Therefore, he requested for acceptance of the instant service appeal.



5. Conversely, learned Deputy District Attorney argued that the impugned orders were in accordance with law and rules. Further argued that the appellant had failed to appear before the Inquiry Officer and the inquiry had been conducted properly, wherein, full opportunity of hearing had been provided to the appellant but he had failed to appear. Lastly, he submitted that the grounds taken by the appellant were false/fabricated and against the rules, therefore, the instant service appeal might be dismissed.

6. Perusal of record reveals that appellant was serving in the respondent/department when on 06.04.2008 he was nominated in a criminal case bearing FIR No.259 under section 302/324 Pakistan Penal Code registered at Police Station City Mansehra, upon which appellant informed his incharge, and started struggle to save his and his family members life. Absence of the appellant was not willful rather same was to protect him and his family member's life. Appellant was proceeded against and was dismissed from service with in just 38 days of registration of FIR. Appellant surrender in the criminal case and after trial by the competent court and law, he was acquitted from the charges vide Judgment and order dated 02.10.2021 by learned Additional Civil Judge-1 Mansehra.

7. Perusal of inquiry report reveals that appellant was proceeded against ex-parte by the inquiry officer which is evident from his report dated 05.05.2008 and also from impugned order dated 14.05.2008. Respondent initiated *ex-parte* disciplinary proceeding against the appellant under Removal from Service Special Power Ordinance 2000



on the ground of his involvement in a criminal case as well as absence from duty. It was however noted that there is no provision in the said ordinance, whereby a civil servant could be proceeded against *ex-parte*, nor any such procedure is available in the said ordinance deal the civil servant, in case the civil servant is involved in a criminal case and is later on granted acquittal by the trial court.

8. Appellant was not provided with an opportunity of defense and just after 38 days of his involvement in a criminal case he was dismissed from service in absentia where is against the principle of justice and rules on the subject.

9. It is established from the record that charges of 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. Appellant after earning acquittal on 02.10.2021 filed departmental appeal on 28.10.2021 which was rejected vide order dated 08.11.2021 as per verdicts of apex court reported in PLD 2010 SC 695 before earning acquittal to file departmental appeal in futile attempt by an employee which read as:


"S.4. Appeal Limitation - Civil servant sought reinstatement in service, after he was acquitted from murder case. Service Tribunal allowed the appeal filed by civil servant and reinstated him in service---Plea raised by employer/bank was that appeal was barred by limitation. Validity--- Civil servant was acquitted in criminal case on 22-9-1998 and he filed his departmental appeal on 12-10-1998, i.e. within three weeks of his


acquittal in criminal case---It would have been a futile attempt on the part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case---It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case which had formed the foundation for his removal from service---Appeal before Service Tribunal was not barred by limitation."

Therefore, appeal of the appellant is not barred by time.

10. For what has been discussed above, we are unison to set aside impugned orders and reinstate the appellant into service for the purpose of de-novo enquiry by providing opportunity of hearing and defence. Respondents are further directed to conclude enquiry within a period of sixty days after receipt of copy of this judgment. Cost shall follow the event. Consign.

11. *Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 23th day of January, 2024.*



(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Abbottabad


(RASHIDA BANO)
Member (J)
Camp Court Abbottabad


11.12.2023

Appellant alongwith his counsel present. Mr. Gul Shehzad, S.I (Legal) alongwith Mr. Habib Anwar, Additional Advocate General for the respondents present.

Learned counsel for the appellant seeks some time for preparation of arguments. Adjourned. To come up for arguments on 23.01.2024 before the D.B at Camp Court Abbottabad. Parcha Peshi given to the parties.


(Fareeha Paul)
Member (E)

Camp Court Abbottabad


(Salah-ud-Din)
Member (J)

Camp Court Abbottabad

Naeem Amin


ORDER

23.01.2024


1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to set aside impugned orders and reinstate the appellant into service for the purpose of de-novo enquiry by providing opportunity of hearing and defence. Respondents are further directed to conclude enquiry within a period of sixty days after receipt of copy of this judgment. Cost shall follow the event. Consign.

3. *Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 23th day of January, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)

Camp Court Abbottabad


(RASHIDA BANO)
Member (J)

Camp Court Abbottabad

*M.Khan