

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 934/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MRS. FAREEHA PAUL ... MEMBER (E)

Tariq Hayat (Ex-PASI No.504) S/o Hayat Khan, R/o Police Department,  
Khyber Pakhtunkhwa.

.... (Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer, Mardan.
3. District Police Officer, Nowshera.

.... (Respondents)

Mr. Javid Iqbal Gulbella  
Advocate

.... For appellant

Mr. Muhammad Jan,  
District Attorney

.... For respondents

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Date of Institution.....15.06.2022  
Date of Hearing.....16.02.2024  
Date of Decision.....16.02.2024

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:

**“It is therefore, most humbly prayed that on acceptance of the instant Appeal, the impugned order No.276-81/PA-Nowshera dated: 10-02-2022 of the office of District Police Officer, Nowshera and of the Impugned order No.3829/ES-MARDAN dated: 31-05-2022 of the Regional Police**



SCANNED  
KPST  
Peshawar

**Officer, Mardan, may kindly be set aside & by doing so the appellant may very graciously be re-instated into service with all the back benefits. Similarly order dated 25.11.2022 passed by IGP in revision of the appellant may kindly be set aside.**

**Any other relief not specifically asked for may also graciously be extended in favour of the appellant in the circumstances of the case.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was enlisted as PASI in Police Department against the Shuhada Son's Quota in the year 2015 and was performing his duties with zeal and zest. During service a complaint was lodge against the appellant on the basis of which he was suspended from service vide order dated 02.02.2022. Departmental proceedings were initiated by issuing a charge sheet alongwith statement of allegation which was replied by him. Thereafter, appellant was dismissed from service vide order dated 10.02.2022. Feeling aggrieved, he filed departmental appeal on 07.02.2022, which was rejected vide order dated 31.05.2022, 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the impugned order passed by the respondent is unwarranted, unlawful and viod-ab initio, hence liable to be set aside. He further argued that neither enquiry has been conducted nor final show cause notice has been issued, therefore, the



impugned order is illegal and is liable to be set aside. He submitted that opportunity of personal hearing was not afforded to him and he was condemned unheard which is against the principle of natural justice.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant while posted as Incharge Police Post, Tariq Abad, a boy namely Afaq visited the Police Post in connection with some matter, where appellant asked Afaq to do sodomy with him in return for favor to Afaq. He further contended that proper departmental proceeding was conducted against appellant through the then ASP Nowshera Cantt: who after fulfillment of all legal and codal formalities held the appellant guilty of misconduct hence, recommended him for major punishment, thereafter, major penalty of dismissal from service was imposed upon him by the competent authority.

6. Perusal of record reveals that appellant was appointed as a PASI in Shuhada sons quota in the year 2015. Appellant was performing his duties with zeal & zest and was posted as Incharge Police Post Tariq Abad, Nowshera when on 2<sup>nd</sup> February 2022 his service was suspended vide order dated 02/02/2022 upon allegation of involvement in immoral activities and nefarious conduct upon complaint of one, Afaq.

7. Appellant was served with charge sheet and statement of allegation which was properly replied by him. One, Mr. Bilal Ahmad ASP Cantt Nowshera, conducted inquiry and submitted his report upon which authority without issuing show cause notice, vide impugned order dated 10.02.2022 awarded major penalty of dismissal from service to the appellant.

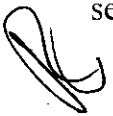
8. Disciplinary proceeding was initiated against the appellant upon application submitted by one Afaq Khattak s/o Zahid Khan but said



application is not available on file, however one written statement of said Afaq is available on record, perusal of which reveals that allegation leveled by the said Afaq is of such a nature that in the Pakhtoon society, a responsible police official can't even think of it, what to ask for it from a member of influential of the locality, even having close relation with political figure. If it was so, it would have resulted in blood feud. If the allegation leveled against the appellant by Mr. Afaq was true, then he must have appeared before the inquiry officer for recording his statement and face the test of cross examination, but his non-appearance for cross examination means he filed application just for the purpose of dismissal of the appellant for the reason mentioned in reply of charge sheet by the appellant.

9. Non-appearance of the alleged complainant Mr. Afaq, a member of before inquiry officer show his intention which is harassment of the appellant. Allegation leveled by him can't be accepted true by any prudent mind. According to settled norms and rules, proper opportunity of hearing and defence must be provided to the appellant but in the instant case neither any opportunity of cross examination nor personal hearing was provided to him.


10. Appellant in his reply specifically mentioned that complainant is son of ex-nazim who is cross relative of Khattak family i.e. Pervez Khattak ex-chief minister and ex-defence minister who just to save honor of his family leveled baseless allegation against him. When complainant Afaq was cross relative of ex-chief minister and ex-defence minister, then there must be pressure upon respondents to kick out appellant from service therefore, they in haste without following proper procedure dismissed appellant from service, which shows biasness of the inquiry officer and department.



11. It is also pertinent to mention here that show cause notice was not issued to the appellant which is against the rules, and admittedly the appellant was condemned unheard.

12. For what has been discussed above, we are unison to set aside impugned orders, re-instate the appellant into service with all back benefits.

13. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 16<sup>th</sup> day of February, 2024.*


  
(FREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

**ORDER**

16.02.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan 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, re-instate appellant into service with all back benefits.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 16<sup>th</sup> day of February, 2024.*



(FAREEHA PAUL)  
Member (E)



(RASHIDA BANO)  
Member (J)