

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

**Service Appeal No. 1711/2023**

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

Mr. Niaz Ali Khan S/O Khan Wali Khan Ex-IHC now IHC/2023,  
Police Station Dadi Wala Unit Investigation, District Lakki Marwat,  
R/O Mohallah Sari Khen, Serai Naurang, District Lakki Marwat.  
..... (*Appellant*)

Versus

1. Additional Inspector General of Police Headquarters, Khyber Pakhtunkhwa  
Peshawar.  
2. Regional Police Officer, Bannu Region, Bannu.  
.....(*Respondents*)

Mr. Arshad Ali Nowsherawi,  
Advocate ... For appellant

Mr. Muhammad Jan,  
District Attorney ... For respondents

Date of Institution..... 11.08.2023  
Date of Hearing..... 29.02.2024  
Date of Decision..... 29.02.2024

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 21.07.2023 of respondent No. 1 in pursuance of an earlier departmental order dated 27.03.2023 passed by respondent No. 2, vide which the appellant was awarded punishment of reversion to lower rank with immediate effect. It has been prayed that on acceptance of the appeal, orders dated 27.03.2023 and 21.07.2023 might be set aside and the appellant might be restored to the rank of IHC with all consequential benefits, alongwith any other relief which the Tribunal deemed appropriate.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the respondent department as Constable on 10.07.2002. On 05.10.2022, he was deployed at Police Station Kaki as IHC/MHC. He was served upon a show cause notice dated 12.01.2023 with the allegations that he was hand and glove with Cook Constable Ihsanullah, who had hired a private person for performing his duties in his place, while he himself was running a private business. The show cause further stated that he did not bring the matter in the notice of his seniors. On 19.01.2023, in reply to the show cause notice, the appellant categorically denied the allegations leveled against him. Departmental proceedings were initiated against him and was reverted to a lower rank vide impugned order dated 27.03.2023. Feeling aggrieved, he preferred departmental appeal on 11.04.2023 which was rejected on 21.07.2023; hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant had nothing to do with the working priorities of any such rank official as it was the prerogative of the Incharge of the concerned Police Station. He further argued that no proper inquiry was conducted in the matter and no opportunity was provided to the appellant to defend himself and he was penalized in a slipshod manner. He further argued that the order was violative of Article 10-A of the Constitution of Islamic Republic of Pakistan. He requested that the appeal might be accepted as prayed for.



5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant, being Moharrir of the Police Station, was responsible to issue duty roster of the staff of Police Station but he failed to discharge his official duty in a proper manner. He further argued that proper departmental enquiry was conducted against the appellant and he was afforded opportunity to defend himself. He failed to prove his innocence and the punishment awarded to him was in accordance with law and rules. He requested that the appeal might be dismissed.

6. The appellant was proceeded against departmentally and a show cause notice was issued to him that he, while posted as MHC at Police Station Kakki, District Bannu, committed the following misconduct:-

- *That as per reliable source you while posted MHC PS Kaki were hand and glove with Cook Constable Ihsanullah No. 53 who had hired a private person for performing his duties in his place while he himself was running a private business.*
- *That you did not bring the matter in the notice of your seniors and reportedly might have referred the same in your successor for extending undue favor in the said cook constable."*


The show cause notice was responded by him but the same was not accepted and he was reverted to a lower rank, with immediate effect, vide an order of the Regional Police Officer, Bannu. His departmental appeal and revision petition was also rejected. A mere perusal of the show cause notice shows that the RPO Bannu came to know about the misconduct of the appellant through a "reliable source". That reliable source has not been named or disclosed at any



stage in the departmental proceedings. It is felt that it should have been the SHO of that Police Station to report any such misconduct, but it is not so in this case. Another connected question with this point is that the SHO is the incharge of the Police Station and he is the one to keep a check that the right person is performing duty at the specific position. If any private person was performing duty in place of the cook constable, then how can one believe that the SHO of the P.S was unaware and it was some un-named reliable source which identified the matter and brought it to the notice of RPO, Bannu? Moreover, the allegations against the appellant were factual in nature and required proper inquiry, which has not been done in this case. The source had to be identified and then proper opportunity of personal hearing, defence and cross-examination had to be provided to the appellant. As the requirements of law had not been fulfilled, hence the impugned orders are not sustainable in the eyes of law and are liable to be set aside. It was further identified by the learned counsel for the appellant that the cook constable, who was allegedly involved in this entire matter and was removed from service, had already been reinstated by this Tribunal vide a judgment dated 13.11.2023.

7. In view of the above discussion, the appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 29<sup>th</sup> day of February, 2024.*

  
(FAREEHA PAUL)  
Member (I)


  
(RASHIDA BANO)  
Member(J)


SA 1711/2023

29<sup>th</sup> Feb. 2024 01. Mr. Arshad Ali Nowsherawi, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Amir Siyab, DSP (Legal) for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 29<sup>th</sup> day of February, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member(J)

\*Fazal Subhan PS\*