

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1956/2023

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

Jehandad Khan (Ex-Constable Belt No. 2127) S/O Imdad Khan R/o Suliman Khel, Badh Bair, Tehsil and District Peshawar.....(*Appellant*)

Versus

1. The Provincial Police Officer (PPO) Government of Khyber Pakhtunkhwa.
2. Capital City Police Officer (CCPO), Peshawar.
3. Superintendent of Police (SP) Headquarter, Peshawar.....(*Respondents*)

Mr. Kabirullah Khattak,

Advocate ... For appellant

Mr. Asif Masood Ali Shah,

Deputy District Attorney ... For respondents

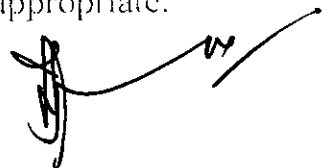
Date of Institution..... 26.09.2023

Date of Hearing..... 06.03.2024

Date of Decision..... 06.03.2024

JUDGEMENT

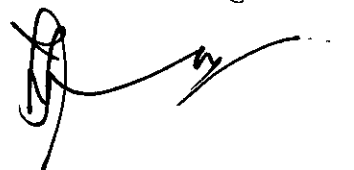
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 16.11.2022 whereby the appellant has been removed from service against which he filed departmental appeal on 28.04.2023 which was rejected on 23.08.2023. Against the said rejection order he filed revision petition which was also rejected on 05.09.2023. It has been prayed that on acceptance of the appeal, the impugned orders dated 16.11.2022, 23.08.2023, 05.09.2023 passed by respondents might be set aside and the appellant might be reinstated into service with all back benefits, alongwith any other remedy which the Tribunal deemed appropriate.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the service of the Police Department as Constable in the year 2007. He was falsely implicated in a criminal case vide F.I.R No. 125, dated 12.12.2021, u/s 9D CNSA, 2019, Police Station Levy Post, District Malakand, He was arrested on the spot and sent to judicial lockup. After the registration of F.I.R, the appellant was dismissed from service on 16.11.2022. He was convicted by the learned Sessions Judge/Judge Special Court Malakand at Batkhela vide order dated 03.09.2022 and sentenced to life imprisonment. Aggrieved by the said order, he invoked the jurisdiction of Hon'ble Peshawar High Court Mingora Bench by way of filing Criminal Appeal. No. 243/2022. The Hon'ble High Court Mingora Bench vide judgment dated 15.03.2023 accepted the appeal, the judgment dated 03.09.2022 was set aside and the appellant was acquitted from the charges leveled against him. After acquittal, he filed departmental appeal on 28.04.2023 before the respondent No. 2 which was rejected on 23.08.2023. He filed Revision Petition against the appellate order dated 23.08.2023 which was rejected on 05.09.2023, hence the 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 Deputy 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 respondents had not treated the appellant in accordance with law, rules and policy on the subject. No charge sheet and statement of allegations



had been served upon the appellant. No regular departmental inquiry was conducted by the respondents and no chance of personal hearing was provided to him. He further argued that no final show cause notice was issued and communicated to the appellant before imposing the major penalty. According to him, when the conviction of the appellant was set-aside by the Hon'ble Peshawar High Court Mingora Bench, no ground remained for the punishment awarded to him by the respondent No. 3. It was the settled principle of law that where the criminal charges were not proved against the accused civil servant before the Competent Court of jurisdiction and he was acquitted on those charges, then the departmental proceedings, based on the same charges, would be wholly irrelevant. He placed his reliance on judgment of the august Supreme Court of Pakistan reported in 2001-PLC-(SC)-Page-316 (Citation-d). He argued that the respondent department should have waited for the decision of the criminal case but they did not do so which was a clear violation of CSR 194-A. He further argued that the appellant was condemned unheard as no opportunity of cross examination was provided to him. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant had not a clean service record as it contained 02 bad entries and 01 minor punishment. The performance of the appellant during service was neither satisfactory nor up to the mark. He was involved in a criminal case and a huge quantity of 11 KG & 340 grams Chars spoke volume of his inefficiency. He was issued charge sheet with statement of allegations and to dig out the real facts a regular inquiry was



conducted, wherein the charges were proved. The inquiry officer, during the course of enquiry, had fulfilled all the requirements and after receipt of the findings, final show cause notice was served upon the appellant on 18.02.2022 and delivered on his home address but he failed to appear and defend himself. The learned DDA contended that court proceedings and departmental proceedings were two different entities and could be run side by side. Acquittal in a criminal case would not lead to exoneration of a civil servant in departmental proceedings. His act brought a bad name for the entire police force. Learned DDA requested that the appeal might be dismissed.

6. Arguments and record presented before us shows that the appellant, while serving as Constable in the provincial police, was charged in FIR No. 125 dated 12.12.2021 u/s 9 D CNSA, 2019, P.S Levy Post, District Malakand. He was arrested on the spot, sent to judicial lockup and later convicted by the Learned Sessions Judge/Judge Special Court Malakand at Batkhela vide judgment dated 03.09.2022 and sentenced to life imprisonment. The conviction was set aside by the Hon'ble Peshawar High Court, Mingora Bench vide judgment dated 15.03.2023. During that period, the appellant was awarded the major punishment of dismissal from service vide an order of the Superintendent of Police, HQ, Peshawar dated 16.11.2022. His departmental appeal as well as revision petition were dismissed by the competent authorities.

7. As argued by the learned counsel for the appellant, no departmental inquiry was conducted and major punishment was awarded without following the procedure under the rules. On the other hand, the learned Deputy District Attorney stated that charge sheet and statement of allegation was issued, after



which a formal inquiry was conducted and when the charges were proved, show cause notice was issued on 18.02.2022 but the appellant did not bother to appear before the competent authority and hence major punishment was awarded to him. The respondents have annexed an inquiry report dated 19.01.2022 with the reply. There is a charge sheet and statement of allegations dated 27.12.2021 also, annexed with the reply. According to the inquiry report, the Inquiry Officer called the appellant through a summon/parwana but he did not appear before him. Then there is a statement of MASI Police Lines, according to whom the appellant was contacted time and again on his cell phone but it was found switched off, therefore his brother was contacted and he was informed about the inquiry. When the appellant did not appear before the Inquiry officer, he recommended for ex-parte proceedings against him. Here a point to be noted is that when the charge sheet and statement of allegations was issued, the appellant was behind the bar. The question is whether simply stating that the charge sheet was issued is enough or had it to be served upon him in the Judicial Lockup. The lack of knowledge of the Inquiry Officer is also to be noted here. It seems strange that he did not know that the appellant was behind the bar, despite the fact that he was the Deputy Superintendent of Police Complaint and Enquiry, Capital City Police, Peshawar, whom we think is a well informed officer. Similarly the issuance of show cause notice on 18.02.2022 and simply stating that the appellant did not respond to it is also not understandable.


8. The appellant was involved in a criminal case and was behind the bar. The respondents were required to place him under suspension till the final



decision of the court of law. Instead of doing that, they resorted to departmental proceedings and without fulfilling the requirements of rules, awarded him major punishment on the basis of his involvement in criminal case. It has been noted that no opportunity of defence was provided to him which is a breach of principles of fair trial. Record shows that the criminal case against him culminated in honourable acquittal by the court of law which makes him re-emerge as a fit and proper person entitled to continue his service.

9. In view of the above discussion, the appeal is allowed by setting aside the impugned orders and the appellant is reinstated into service with all back benefits. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 06th day of March, 2024.*


(FAKHRIA PAUL)
Member (I)


(RASHIDA BANO)
Member(J)


Fakhria Paul P.S.

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06th Mar. 2024 01. Mr. Kabirullah Khattak, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal is allowed by setting aside the impugned orders and the appellant is reinstated into service with all back benefits. 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 06th day of March, 2024.*


(FARIHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

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