

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

**Service Appeal No. 153/2023**

**BEFORE:** RASHIDA BANO --- MEMBER (J)  
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Muhammad Asim Ex-Constable No. 536 R/o Esak Chontra Tehsil and District Karak.....(*Appellant*)

**VERSUS**

1. Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar.
2. Additional Inspector General of Police, Elite Force Khyber Pakhtunkhwa, Peshawar.
3. Deputy Commandant Elite Force Khyber Pakhtunkhwa, Peshawar.
4. Commandant Elite Force Khyber Pakhtunkhwa Peshawar..... (*Respondents*)

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**Present:-**

KABIRULLAH KHATTAK,  
Advocate --- For Appellant.

ASAD ALI KHAN,  
Assistant Advocate General --- For respondents.  
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Date of Institution.....17.01.2023  
Date of Hearing.....29.01.2024  
Date of Decision..... 29.01.2024

**JUDGMENT.**


**MUHAMMAD AKBAR KHAN, MEMBER(E):-** The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

*“On acceptance of this service appeal the impugned order dated 05.01.2021, 09.12.2022 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits. Any other remedy which relief deemed appropriate in*

*the circumstances of the case not specially ask for, may also be granted to the appellant.”*

02. Brief facts of the case are that the appellant, while posted on deputation to Elite Force Khyber Pakhtunkhwa Peshawar was imposed major penalty of dismissal from service vide order dated 05.01.2021 on the allegation of his involvement in criminal case vide FIR No. 608 dated 25.09.2020 U/S 302/34 PPC Police Station Karak District Karak. The appellant was acquitted vide order dated 11.10.2022 by the Additional Sessions Judge-II Karak, thereafter the appellant filed departmental appeal on 17.11.2022 which was rejected vide order dated 09.12.2022 and communicated to the appellant on 21.12.2022

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Assistant Advocate General and have gone through the record with their valuable assistance.

 04. Learned counsel for the appellant argued that the impugned orders dated 05.01.2021 & 09.12.2022 are against the norms of justice, illegal, unconstitutional and without authority, therefore, not tenable. He further argued that upon registration of FIR against the appellant, the respondents were required to suspend the appellant till conclusion of criminal case pending against him, but the respondents did not wait for conclusion of the criminal case, rather initiated disciplinary proceedings at the back of the appellant. He further argued that the appellant was acquitted by the trial court vide judgment dated 11.10.2022. He next contended that after acquittal

of the appellant in the criminal case, there was no material available with the respondents to maintain the major penalty of dismissal from service. Learned counsel for the appellant further contended that proper charge sheet/statement of allegations was not issued to the appellant. No Show Cause Notice was issued to the appellant and no chance of personal hearing was provided to the appellant. He has, therefore, been condemned unheard. He submitted that no regular inquiry has been conducted in the matter which is mandatory obligation on the part of competent authority.

05. Learned Assistant Advocate General on the other hand contended that the appellant while on deputation to Elite Force Khyber Pakhtunkhwa was proceeded against on the allegations of his involvement in criminal case vide FIR No. 608 dated 25.07.2020 U/S 302/324/34 PPC Police Station Karak District Karak and also absented himself from duty w.e.f 25.09.2020 to 08.12.2020 without leave/permission, therefore, disciplinary action was taken against him in accordance with Police Rules, 1975 and after conducting of proper inquiry, he was rightly dismissed from service. Furthermore, no violation of the Constitution of Islamic Republic of Pakistan, 1973 has been made by the respondents and the punishment given to the appellant was in accordance with the gravity of misconduct. In the last, he argued that the punishment order passed by the competent authority is in accordance with the law/rules.

06. Legal scrutiny of record reveals that the appellant while posted on deputation to Elite Force Khyber Pakhtunkhwa, Peshawar was charged in FIR No. 608 dated 25.09.2020 U/S 302, 324/34 PPC, Police Station, District Karak. After registration of the said FIR the appellant absconded for some

time and his absence from duty was reported to the Deputy Commandant Elite Force, Khyber Pakhtunkhwa, who ordered departmental inquiry. Charge Sheet and summary of allegations were issued by the Deputy Commandant Elite Force, Khyber Pakhtunkhwa on 29.09.2020 appointing Mr. Muhammad Irfan, DSP Kohat as inquiry officer. However, no inquiry has been conducted by Mr. Muhammad Irfan, DSP. Available on record is a few line information report submitted by SP, Elite Force and RRF, Kohat Region with reference to the order of inquiry report dated 29.09.2020 in which it is stated that the appellant has been found absent after performing Polio duty on 25.09.2020 and the same date an FIR has been registered against the appellant in Police Station Karak. Another report submitted by the RI, Elite Force to the Deputy Commandant, Elite Force, reveals that the appellant was under custody of the local Police after cancellation of bail before arrest by the competent court of law. It is clear from the aforementioned facts that he appellant was served with the charge sheet and statement of allegations nor he was associated with the inquiry ordered on 29.09.2020. The appellant never received show cause notice nor report of the formal inquiry conducted by the inquiry officer is available on record. The competent authority issued impugned order imposing major penalty of dismissal from service upon the appellant on 05.01.2021 when it was well in his knowledge that the appellant was in the Police custody. We also observe that the appellant was on deputation to the Elite Force and the Deputy Commandant, Elite Force was required to submit a departmental proceedings to the competent authority in the parent department of the appellant before passing the final order. Moreover, the charge of involvement of the appellant in the criminal case which was the main ground

of proceedings against him stands disproved as he has been acquitted by the competent court of law.

07. In view of forgoing discussion we are constrained to set aside the impugned orders dated 05.01.2021 & 09.12.2022 and reinstate the appellant in service. The period from 26.09.2022 till the date of passing of judgment shall be treated as leave without pay. Costs shall follow the event. Consign.

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



(RASHIDA BANO)  
Member (J)



(MUHAMMAD AKBAR KHAN)  
Member (E)


**ORDER**

29.01.2024 01. Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file consisting of (05) pages, we are constrained to set aside the impugned orders dated 05.01.2021 & 09.12.2022 and reinstate the appellant in service. The period from 26.09.2022 till the date of passing of judgment shall be treated as leave without pay. Costs shall follow the event. Consign.

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

  
(RASHIDA BANO)  
Member (J)

  
(MUHAMMAD AKBAR KHAN)  
Member (E)