

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 580/2023

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Mr. Jamal Rasool S/O Rasool Badshah R/O Kanda Karak, Tehsil and District Karak.....(*Appellant*)

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Kohat Region, Kohat.
3. District Police Officer Karak.
4. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
.....(*Respondents*)

Mr. Shahid Qayum Khattak,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

Date of Institution.....	17.03.2023
Date of Hearing.....	22.02.2024
Date of Decision.....	22.02.2024

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 09.01.2023 passed by respondent No. 3, whereby the appellant was awarded major punishment of termination/removal from service and against the order dated 14.02.2023, issued on 01.03.2023 passed by respondent No. 2 vide which his departmental appeal was rejected. It has been prayed that on acceptance of the appeal, the impugned orders dated 09.01.2023 and 14.02.2023 might be



set aside and the appellant might be held entitled for all back benefits of pay and service.

2. Brief facts of the case, as given in the memorandum of appeal, are that respondent No. 3 initiated disciplinary proceedings against the appellant and issued charge sheet and statement of allegations to him. Thereafter, an inquiry was initiated against him and respondent No. 3 passed an order dated 09.01.2023 vide which major punishment of termination/removal from service was passed against him without collecting any evidence and providing an opportunity of hearing to him. Feeling aggrieved, he filed departmental appeal/representation before respondent No. 2 which was rejected on 14.02.2023 issued on 01.03.2023; hence the instant service appeal.

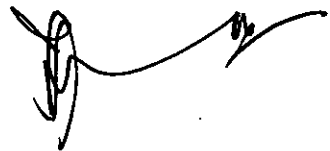
3. Respondents were put on notice. They submitted written reply/comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned orders were harsh, without any evidence, based on surmises & conjectures and against the principle of natural justice. He further argued that during the enquiry proceedings no one was examined in support of the charges levelled against the appellant nor any opportunity of hearing was provided to him. He was not confronted with any documentary or other kind of evidence. He further argued that it was a settled principle of justice that no one should be condemned unheard but in the instant case no

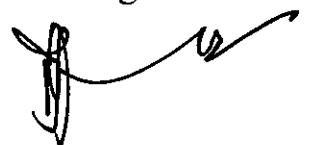


proper enquiry was conducted. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was charged for making deceit and fraud in recruitment as Constable in the Police Department. He had not qualified ETEA test for recruitment as Constable for the year 2020-21 and was not recommended in the psychological assessment and final interview by the Regional Selection Board on account of his mental health condition. The Review Board held at CPO had also not recommended him for appointment. The learned DDA argued that in the recommendation list received from CPO Peshawar to District Karak, appellant was shown as "recommended" while in another list provided by SSU (CPEC) CPO Peshawar he was "not recommended". Similarly, in another list from CPO Peshawar dated 29.12.2021, appellant was not recommended. According to the learned DDA, the appellant fraudulently succeeded in getting his appointment order on the basis of tempered recommendation. The SDPO Takht-e-Nasrati conducted the enquiry against the appellant by fulfilling all the codal formalities, recorded the statements and collected evidence on record and the appellant was held guilty of gross misconduct. Respondent No. 3, being competent authority, heard him personally, but he failed to defend himself and, hence, major punishment was awarded to him after fulfilling all procedural and legal formalities. He requested that the appeal might be dismissed.



6. The appellant was recruited as Constable in the Khyber Pakhtunkhwa Police through ETEA 2020-21, and was issued belt No. 4984. At some later stage, it came to the knowledge of the respondent department that the appellant was not recommended by the Regional Selection Board but he got himself recruited through fraud and deception. An inquiry was conducted and he was awarded major punishment of termination/removal from service. According to the inquiry report annexed with the reply of the respondents, two merit/selection lists, bearing the same number 14699-720/E-IV and date 29.12.2022, were received from the office of CPO. In one of the lists, the appellant was "recommended" at serial no. 102 whereas in the other, he was placed at the same serial no. but with the remarks "not recommended". The respondents have attached another order at Annex A-3 of their reply, dated 30.12.2021 signed by District Police Officer, Karak, which shows that 124 candidates were enlisted/recruited as Constables in BS- 7 and the appellant is at serial No.123 of that order. Each page of that order has been signed by the DPO Karak. One completely fails to understand that how the appellant managed to get his name enlisted in all these lists and orders? When asked, the learned Deputy District Attorney stated that he did not have any answer to the query as to how the admittedly received letter from the CPO was maneuvered by the appellant, whereby he had been shown to have been recommended. In pursuance of the query from the bench, learned DDA did not hesitate to provide his statement in writing. Similarly the departmental representative, an official of Inspector rank, was not able to respond to the query of this bench that how the Inquiry Officer proved the allegations




against the appellant when both the letters, on which he based his finding report, were issued by the same authority.

7. From the above discussion, it appears that no effort has been made by the department to look into the matter of issuance of two letters bearing the same number and date from the office of Inspector General of Police, Central Police Office, Khyber Pakhtunkhwa to ascertain the facts. It further transpires that no one in the CPO bothered to give a second look to the letter and confirm the recommendations of Regional Selection Board and the CPO Review Board.

8. The appeal in hand is, therefore, remitted to the respondent department for holding proper inquiry into the matter and conclude the report within sixty days of the receipt of this judgment. The issue of back benefits is subject to the outcome of inquiry report. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 22nd day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman


SA 580/2023


Order

22nd Feb. 2024 01. Mr. Shahid Qayum 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 05 pages, the appeal in hand is remitted to the respondent department for holding proper inquiry into the matter and conclude the report within sixty days of the receipt of this judgment. The issue of back benefits is subject to the outcome of inquiry report. 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 22nd day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS