

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No. 1223/2023

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

Amirullah S/O Ferooz Khan R/O Dhab Sangani, Dhab, 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.....	29.05.2023
Date of Hearing.....	23.02.2024
Date of Decision.....	23.02.2024

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 15.01.2023 passed by respondent No. 3, whereby the appellant was awarded major punishment of termination/removal from service and against the order dated 04.05.2023, 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

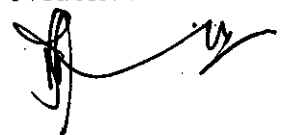


dated 15.01.2023 and 04.05.2023 might be set aside and the appellant might be held entitled for all back benefits of pay and service.

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 15.01.2023 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 04.05.2023, and the same was not intimated to the appellant officially till filing of 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/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 his name was not included in the list of qualified candidates. In one of the lists received in District Karak, the appellant was shown as "recommended" while in another list provided by the CPO Peshawar, he was shown as "not recommended". Similarly, the list requisitioned from CPO Peshawar by the Regional Police Officer, Kohat did not reflect him as "recommended". The learned DDA argued that the appellant fraudulently succeeded in getting his appointment order on the basis of tempered recommendation. The SDPO Takht-e-Nasrati conducted the enquiry against him 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.




5007. At some later stage, it came to the knowledge of the respondent department that the appellant was shown as "passed" at serial no. 130, scoring 40 marks in ETEA merit list, received directly from CPO Peshawar whereas the ETEA list requisitioned from CPO Peshawar through RPO did not show his name, which meant that he was a failed candidate. He was charged on the ground that 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, there were two recruitment lists. In one of the lists, out of the 130 successful candidates, the appellant was "recommended" at serial no. 130, whereas in the other, 128 candidates were shown as successful but in that list, name of the appellant was not mentioned. In the same report, the inquiry officer has clearly mentioned in its last sentence that how the name of the appellant was brought in the list provided by the CPO is to be ascertained by the CPO Peshawar. When the learned Deputy District Attorney was confronted with the question that whether any action was taken on the recommendation of the inquiry officer, he frankly stated that no action was taken except passing the impugned order of termination/removal from service. One completely fails to understand that how the lists were manipulated by the appellant and why no one in the office of Inspector General of Police, Central Police Office Khyber Pakhtunkhwa bothered to ascertain the facts behind the two lists being issued from the same office.




7. In the light of the above discussion, 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 question of back benefits is subject to the outcome of inquiry report. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 23<sup>rd</sup> day of February, 2024.*

  
(FARZEHA PAUL)  
Member (E)

*\*FazleSubhan, P.S\**

  
(KALIM ARSHAD KHAN)  
Chairman


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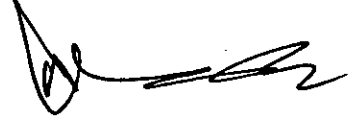
Order

23<sup>rd</sup> 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 question 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 23<sup>rd</sup> day of February, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(KALIM ARSHAD KHAN)  
Chairman

\*Fazal Subhan PS\*