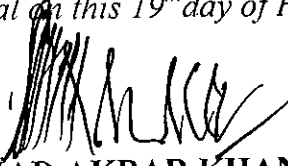



Muhammad Sohail, Junior Clerks were also nominated in the FIR and were proceeded against departmentally, were awarded penalty of censure vide order dated 24.02.2020, while the appellant has been discriminated.

8. Perusal of inquiry report reveals that inquiry officer held all of them equally responsible without any bifurcation, but while awarding penalties, other officials being junior clerks have been awarded penalty of censure but the appellant was awarded major penalty being a Senior Clerk. When nature of misconduct of all the officials is the same then it is not understandable to penalize them differently.

9. In view of the above discussion, we are unison to set aside the impugned order dated 24.02.2020 and convert it into minor penalty of censure. Cost shall follow the event. Consign.

10. *Pronounced in open court in D.I Khan and given under our hands and seal of the Tribunal on this 19th day of February, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court, D.I.Khan


(RASHIDA BANO)
Member (J)
Camp Court, D.I.Khan

enquiry the allegations were proved against him. Moreover, an opportunity of personal hearing was given to him but he failed to prove his innocence, hence the orders passed by the respondents are in accordance with law.

6. Perusal of record reveals that appellant is working in respondent department as Senior Clerk when he was nominated along with two others namely Muhammad Sohail and Saif ur Rehman in a criminal case bearing FIR No.1267 on 31.12.2019 under section 161, 162, 167 PPC and 118 Police Act of Police Station Cantt, D.I.Khan. Appellant was suspended from service vide order dated 06/01/2020. Respondent initiated department proceeding against appellant by issuing of charge sheet with statement of allegation on 02.01.2020 with the allegation:

“that inspite of orders of the undersigned, you were involved in getting illegal gratification from general public in connection with scanning of images for their driving licenses”

Additional Superintendent of Police was appointed as Inquiry Officer. Appellant replied to charge sheet, inquiry officer in his inquiry report submitted on 31.01.2020 found appellant guilty of the misconduct. Appellant vide impugned order dated 24.02.2002 was awarded major penalty of reduction to a lower post of Junior Clerk.

7. Perusal of record further reveals that appellant was awarded major penalty under Rule 4(b)(1) of the Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011 and under the rule ibid period of reduction is specified upto three years, while through the impugned order there is no specification of time period for which it will be operative hence, penalty awarded to the appellant is not in accordance with the rules. Therefore, impugned penalty required correction and modification to this extent. Moreover, appellant alongwith two others i.e. Saif ur Rehman and

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

4. Learned counsel for the appellant argued that the impugned proceedings on the basis of which appellant was proceeded denovo by the respondents are without lawful authority and without jurisdiction being void ab-initio, are liable to be set aside. He further argued that respondents were under the law bound to deal the appellant in accordance with law and keep him under suspension as in accordance with the rules till the disposal of Trial, but they through impugned proceedings has acted malafide, which is unwarranted under the law. He further argued that respondents had led the case of the appellant to the dictum of pre-emptive punishment and afterwards to dual punishment by malafidely proceeding against him without lawful authority and jurisdiction as the appellant has been acquitted from the charges levelled against him, whereas the impugned orders were kept intact which are equivalent to nullity after the acquittal of the appellant from the allegations and charges leveled against him.

5. Conversely, learned Deputy District Attorney contended that appellant while posted as Traffic Clerk was illegally involved in scanning of various types of licenses database computer by receiving bribe money from people. FIR No. 1267 dated 31.12.2019 was registered against the appellant alongwith two sub-ordinates in consequence thereof, was suspended from service. He further contended that charge sheet alongwith statement of allegation was served upon him and departmental inquiry was conducted by Superintendent of Police, Investigation D.I Khan. During the departmental

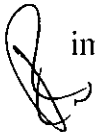


“Through Service Appeal in hand, the appellant is beseeching to declare impugned departmental proceedings by respondent No.5 as well as respondent No.6 vide which impugned order No.823/ES, dated 24.02.2020 was passed by respondent No.5 and appellant was reduced to lower grade prior to conclusion of trial in FIR No.1267, dated 13.12.2019, and later on the same was maintained and confirmed by respondent No.3 vide order No.1655-58/E-V, dated 10.06.2021, after acquittal of the appellant, as null and void ab-initio, and without lawful authority and without lawful jurisdiction and ineffective upon the rights of appellant.

The respondents authorities may graciously be directed to deal the appellant as in accordance with law and by setting aside impugned proceeding and impugned orders mentioned above, appellant be reinstated at his original position with all back benefits and seniority as in accordance with law and statute.

Any other relief may graciously be granted with this Court deems fit and proper for the natural justice.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant while serving as Senior Clerk at the office of District Police Officer, Tank was charged in FIR No. 1267 dated 13.12.2019 alongwith two others. On the basis of which they were suspended from their duties vide order dated 06.01.2020. Trial against the appellant was concluded on 15.04.2021 and learned JMI, D.I.Khan acquitted the appellant from the charges leveled against him. Appellant filed representation before respondent No.3 on 22.04.2021, who without touching the merits of the case, has maintained the impugned order passed by the respondent No.5, vide impugned order dated 10.06.2021, hence, the instant service appeal.



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT
CAMP COURT D.I KHAN

Service Appeal No. 7737/2021

BEFORE: MRS. RASHIDA BANO ... MEMBER(J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER(E)

Malik Muhammad Arif S/O Ghulam Rasoo, Presently Junior Clerk, DPO
Office Tnak.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. Provincial Police Officer/Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar.
4. Additional Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
5. Regional Police Officer/Deputy Inspector of Police, Dera Ismail Khan Division, Police Range, Dera Ismail Khan.
6. District Police Officer, Dera Ismail Khan.

.... Respondents)

Mr. Muhammad Idrees
Advocate

.... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

.... For respondents

Date of Institution.....08.11.2021
Date of Hearing.....19.02.2024
Date of Decision:.....19.02.2024

JUDGMENT

RASHIDA BANO, MEMBER (J):The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

