

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1618/2021

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

Mr. Rahat Ullah Constable/Computer Operator, Computer Cell,
Investigation, Unit CPO, Peshawar.

.... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Capital City Police Officer Peshawar.
3. The Senior Superintendent of Police Peshawar.

.... (Respondents)

Mr. Khalid Rehman
Advocate

.... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

.... For respondents

Date of Institution.....25.01.2021
Date of Hearing.....29.02.2024
Date of Decision.....29.02.2024

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 as copied below:

“On acceptance of the appeal, the impugned order dated 22.10.2020 and impugned appellate order dated 06.01.2021 may graciously be set aside/modified and appellant may be re-instated into service w.e.f 05.07.2017 with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was enlisted as Constable in Police Department in the year 1995

and was performing his duties with zeal and zest. Later on, his services were assigned to the Investigation Wing CPO, where he was discharging his duties as Computer Operator. During service, he was implicated in case FIR No. 89 dated 12.04.2017 U/S 419/420/468 PPC Police Station Mandani. Departmental proceedings were initiated against him by issuing a charge sheet and statement of allegations. Reply of which was submitted by him refuting the allegation. Thereafter, competent authority imposed major penalty of compulsory retirement from service vide order dated 05.07.2017. Appellant filed service appeal No. 1243/2017 before this Tribunal which was decided on 01.07.2020 by directing the respondents to reinstate the appellant and conduct de-novo inquiry in accordance with law and rules. Inquiry was conducted and after fulfillment of all codal formalities, he was awarded the penalty of stoppage of two increments with accumulative effect. Feeling aggrieved, he filed departmental appeal on 04.11.2020 which was rejected vide order dated 06.01.2020, hence the instant service appeal.

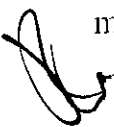
3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the impugned orders passed by the respondents are unjust and unfair hence, not sustainable in the eyes of law. He further argued that neither regular inquiry was conducted nor any evidence was recorded in presence of the appellant nor was he provided opportunity of cross examination and action was taken at the back of the appellant; that no show notice was issued which is mandatory requirement of law and without issuing show cause notice the impugned

penalty is arbitrary and unlawful, hence, liable to be set aside; that no opportunity of personal hearing was afforded to the him and he was condemned unheard which is against the principle of natural justice.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further argued that appellant was provided an opportunity of defense ordered by this Tribunal but he failed to rebut the charges and lenient view was taken and minor punishment was awarded which is not appealable under the circumstances. He further argued that proper inquiry was carried out wherein charge sheet alongwith statement of allegations and chance of hearing was afforded to him and after fulfillment of codal formalities dismissal from service was converted into minor penalty which commensurates with the proved charges.

6. Perusal of record reveals that it is second round of litigation. Initially appellant was enlisted in respondent department in the year 1995 as Constable who was serving as Computer Operator in investigation wing CPO when he was implicated in criminal case FIR No 89 under section 419/420/408 PPC dated 12.04.2017 of police station Mandani. Respondents initiated departmental proceeding against the appellant by constituting inquiry committee consisting of DSP Investigation and Inspector Investigation CPO Unit Peshawar by issuing charge sheet and statement of allegation on 14.04.2017. Appellant replied the same on 20.04.2017. Inquiry Committee submitted its report and final show cause notice was issued to appellant on 11.05.2017. The appellant accordingly submitted his reply to the show cause notice on 22.05.2017 contesting therein that he was not personally called by the Enquiry Committee and he would like to be heard in person by the competent authority. Respondent No.3 (SSP Investigation Unit) awarded him major penalty of "Compulsory Retirement from Service" vide impugned order



dated 05.07.2017, against which the appellant submitted his departmental appeal to the DIG Police (Headquarter/Investigation, Peshawar) under the Khyber Pakhtunkhwa Police Rules 1975 on 20.07.2017. His departmental appeal was also rejected on 27.09.2017. Appellant filed service appeal wherein vide order dated 01.07.2020 respondent were directed to conduct de-novo inquiry strictly in accordance with the parameters of prevalent law and rules including fair and impartial treatment of providing personal hearing to the appellant within a period of ninety days after date of receipt of the Judgment of this Tribunal. After receipt, respondent issued fresh charge sheet and statement of allegation on 06.08.2020 with the allegation of travelling in a non-custom paid vehicle along with one Shahid driver and upon interception produced one authority letter of the office of DIG investigation HQRs as a proof document due to which he alongwith his companion was arrested by the local police of Mardan. Respondent again constituted inquiry committee comprising of SP Investigation CPO Peshawar, DSP/Admin Investigation Peshawar and DSP Investigation Peshawar. Committee submitted its report on the basis of which impugned penalty of compulsory retirement was converted into minor penalty of stoppage of two annual increments with accumulative effect and period of absence was treated as leave without pay. Appellant was acquitted from the charges by the competent court of law in a criminal case vide order dated 25.01.2020. Moreover, it is also evident from inquiry report and impugned order that one Karimullah P.A to DIG/HQ investigation CPO who allegedly issued said authority letter was reinstated into service by the appellate authority.

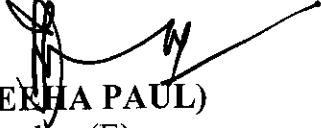
7. Otherwise too, allegation against Karimullah who allegedly provided letter was severe in nature, that's why initially he was awarded major punishment of dismissal from service but later on he was reinstated into




service vide order dated 11.09.2018. In our humble view when no link of the appellant was established with NCP vehicle then in such a situation awarding of minor punishment of stoppage of two increments with accumulative effect is harsh; accumulative effect in essence is a major penalty. Therefore, it will be in the interest of justice and fair play, thus the appellant be treated with sympathy & fairly.

8. For what has been discussed above, we are unison to accept the appeal in hand partially by setting aside the impugned order to the extent of accumulative effect. 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 29th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)


*Kaleemullah


23.11.2023

Appellant alongwith junior of his counsel present.
Mr. Muhammad Riaz, Inspector alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 29.02.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KYST
Peshawar


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)

Naeem Amin


ORDER

29.02.2024 1 Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Khyal Roz, Inspector for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to accept the appeal in hand partially by setting aside the impugned order to the extent of accumulative effect. Cost shall follow the event.

Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 29th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemullah