

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.15879/2020

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

Muhammad Arif S/O Mamraiz Khan, Ex-Constable No. 1715, District Nowshera.

.... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan.
3. The District Police Officer, Nowshera.

.... (Respondents)

Ms. Roeeda Khan
Advocate For appellant

Mr. Muhammad Jan
District Attorney For respondents

Date of Institution.....10.12.2020
Date of Hearing..... 27.02.2024
Date of Decision..... 27.02.2024

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:


“On acceptance of the appeal, both the impugned orders dated 18.08.2020 and 13.10.2020 may kindly be set aside and appellant be reinstated in service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be granted in favour of appellant.”



2. Brief facts of the case as given in the memorandum of appeal are that the appellant was enlisted as Constable in Police Department. During service, the appellant was charged in case FIR No. 232, dated 11.05.2020 U/S 387, 506 PPC 25-Telegraph Act, PS Pabbi on the basis of which he was suspended from service vide order 19.05.2020. He was arrested in the said case and later on released on bail vide order dated 04.06.2020 by the competent court of law. After release he was reinstated in service vide order dated 30.06.2020, thereafter, denovo inquiry was initiated against him by issuing charge sheet and statement of allegation which was duly replied by the appellant by negating all the allegations levelled against him. The appellant was dismissed from service vide order dated 18.08.2020. Feeling aggrieved, he filed departmental appeal on 22.08.2020, which was rejected on 13.10.2020 and order of rejection of departmental appeal was communicated to the appellant on 03.12.2020, 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the impugned orders passed by the respondents are void ab-initio because they passed without fulfilling codal formalities. He further argued that appellant has not been suspended by the respondent department before passing the impugned dismissal order which is violation of CSR 194. He submitted that no regular inquiry was conducted as neither statements were recorded in



presence of appellant nor opportunity of cross examination was provided to him which is against the law and rules hence, the impugned orders are liable to be set aside. He further submitted that even no opportunity of personal hearing was afforded to him and he was condemned unheard, therefore, he requested for acceptance of instant service appeal. He placed reliance on 2007 SCMR page 834, 2008 SCMR page 678 and 2003 PLC (CS) page 365.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that he was nominated by the complainant in case FIR No. 232 dated 11.05.2020 , therefore, he was arrested. Moreover, mere grant of bail does not mean that he was acquitted of the charges. He further contended that proper inquiry was conducted, against the appellant through the then ASP Nowshera Cant: who in his findings report of enquiry recommended that enquiry papers be kept pending till the decision of the court. Then a de-novo inquiry was conducted against the appellant through DSP Pabbi, who in his findings report of the enquiry stated that allegations against the appellant have been proved hence, recommended him for major penalty of dismissal from service.

6. Perusal of record reveals that appellant, while performing his duties as constable in respondent/department, was nominated in a criminal case bearing FIR No 232 dated 20.05.2020 under Section 387/506 PPC read with Section 25 of Telegraph Act at Police Station Pabbi, due to which he was suspended by the respondent vide order dated 19.05.2020. Appellant was arrested & granted bail by the competent court of law on 04.06.2020.



He was departmentally proceeded against by appointing Mr. Bilal Ahmad ASP Cant Nowshera who after fulfillment of codal formalities recommended that appellant be reinstated into service and inquiry be kept providing till final decision of court. Respondent No. 3 accordingly reinstated appellant into service and kept inquiry pending against him till the decision of the criminal case registered against him vide order dated 30.06.2020. But on 13.07.2020 without waiting for decision of the fate of the criminal case the competent court of law, respondent No 3 in deviation of his own order, initiated de-novo enquiry, suspended appellant on the basis of involvement in criminal case by appointing DSP Pabbi circle as inquiry officer who recorded statements of complainant of criminal case, one Zar Nabi alongwith statement of five police officials beside statement of appellant and submitted his inquiry report on 11.08.2020. Final showcuase notice was issued to the appellant by the authority on 12.08.2020 which was duly replied by the appellant, and was found unsatisfactory by the respondent who, vide impugned order dated 18.08.2020 awarded major penalty of dismissal from service with immediate effect. His departmental appeal was turned down by the respondent No 2 vide order dated 13.10.2020. Appellant was acquitted from charges level against him in the criminal case FIR No.232vide judgment & order dated 10.10.2023. Allegation against the appellant was that he demanded ransom money from one Mr. Falak Niaz amounting to Rupees One Million and in case of failure to pay the same he threatened compliant of dire consequences through written letter by throwing it at the home of the complaint. After few days complainant Falak Niaz received



threat call on his cell phone No 0300-5970228 from cell No 0093789441311 and the caller again demanded said ransom from him. Complainant and his wife also received objection message on Facebook from an ID of Kokalak which caused mental torture to him and his spouse and it also become source of embarrassment for them. Complainant reported the matter and during investigation appellant was traced as the one who allegedly made threat calls to the complainant & demanded ransom from him. Admittedly SIM bearing No 0093789441311 was not registered in the name of appellant rather it was registered in the name of one Zar Nabi s/o Nawab Ali as it was issued on his CNIC. Zar Nabi alleged that he alongwith his friend Bilal went to Haji Bahadur BaBa and in way they, were stopped by police official of Police Post Mattani Pabbi for verification where appellant allegedly taken SIM bearing No. 009378944 1311 who used it for ransom demand from complainant Falak Naz.

7. Admittedly in query officer recorded statements of complainant Falak Niaz and Zar Nabi, Bilal beside constable Zahid Ameen No 1735, Shoukat H.C No. 506, Riaz No. 678 Misal Rehman No. 1193 and Faizur Rehman SI but no opportunity of cross examination was provided to the appellant which is for most requirement and essential element of fair trial. It was incumbent upon inquiry officer to provide opportunity of defense and cross examination upon witness who deposed against appellant which had not been provided by him to the appellant and appeal was condemned in


record.



8. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of 'audi alteram partem' was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

9. For what has been discussed above, we are unison to reinstate the appellant for the purpose of de-novo inquiry by providing opportunity of cross examination upon all the witnesses who deposed against him. The issue of back benefits shall be decided subject to the outcome of de-novo inquiry. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER

27.02.2024 1 Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to reinstate the appellant for the purpose of de-novo inquiry by providing opportunity of cross-examination upon all the witnesses who deposed against him. The issue of back benefits shall be decided subject to the outcome of de-novo inquiry. 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 27th day of February, 2024.*


(FARIEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)