

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 354/2022

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

Zazi Gul ASI No. 826 MR S/o Anar Gul R/o Kochiyano Kaley Takhtbai
District Mardan.....(Appellant)

VERSUS

1. District Police Officer Mardan.
2. Regional Police Officer Mardan.
3. Inspector General of Police Khyber Pakhtunkhwa Peshawar.

... (Respondents)

Ms. Roeda Khan
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney


... For respondents

Date of Institution.....21.02.2022
Date of Hearing.....06.03.2024
Date of Decision.....06.03.2024

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 this appeal, both the impugned order dated 25.08.2021, rejection order dated 25.01.2022 may kindly be set aside and the appellant may kindly be restored on his original post/service along with all back benefits. Any other



remedy which this August Tribunal deems fit that may also be onward granted in favor of appellant."

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was enlisted as Constable in Police Department and since then he performed his duty regularly with full devotion. That while performing his duty as In-charge at Police Station Motorway allegation of corruption by taking illegal gratification has been levelled against him on the basis of which he was suspended and later on major penalty of reduction to a lower rank was imposed upon him vide order dated 28.05.2021. Feeling aggrieved, he filed departmental appeal which was rejected on 25.01.2022, hence, the present 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 appellant argued that he has not been treated in accordance with law and rules. He further argued that the impugned order dated 25.08.2021 and the rejection order dated 25.01.2022 are void ab-initio, hence liable to be set aside; that no charge sheet and statement of allegation has been issued or served to the appellant which are violation of Rule-6 (A) (B) of Police Rules, 1975; that neither show cause notice has been issued nor opportunity of cross examination has been provided to the appellant. He submitted that no chance of personal hearing was afforded to him and he was

condemned unheard which is against the norms of natural justice. He placed reliance on 2007 SCMR 834, 2008 SCMR 678 and 2016 SCMR 108.

5. Conversely learned Deputy District Attorney contended that appellant while posted as In Charge P.P Motorway was placed under suspension on account of involvement in corruption by taking illegal gratification of Rs.50,000/- from one Muhammad Ali Raza, on the basis of which he was proceeded against departmentally by issuing charge sheet and statement of allegation and enquiry was entrusted to the then SDPO TakhtBhai. During the course of inquiry appellant submitted his reply which was found unsatisfactory and after fulfillment of all legal and codal formalities, competent authority imposed major penalty of reduction in rank from ASI to Head Constable.

6. Perusal of record reveals that the appellant has been serving in Police Department since long at District Mardan. That while performing his official duty as incharge of police post Motorway a false and fabricated allegation of corruption by taking illegal gratification of Rs. 50,000/- by one Muhammad Ali Raza has been levelled against the appellant. That due to the reason mentioned above the appellant has been awarded major punishment of reduction from ASI to Head Constable on 25.08.2021 by the respondent department. Perusal of daily dairy No 38 dated 25.05.2021 transpires that DPO Rural Mardan upon direction of high ups visited Police Station Toru and its police post but had not found vehicle of the complainant Muhammad Ali bearing No. WO-84 parked there. In the Meanwhile one Zazi Gul sub inspector came and told him that vehicle was taken into possession by him upon information of informer and he concealed it in a secret place which Zazi Gul



subsequently produced upon his direction. SDPO got verified the vehicle from excise department which was genuine. Therefore, he handed over vehicle to owner Muhammad Ali who alleged that appellant obtained from him Rs. 50,000/- as illegal gratification and also demanded more amount for release of vehicle. Inquiry report revolves around the daily diary of SDPO but the said SDPO was not examined and no chance of cross examination was provided to the appellant upon him. He was the one who alleged that motor car was recovered from the possession of the appellant and he had parked it in a secret place. Moreover opportunity of cross examination upon complaint Muhammad Ali also must have been provided to the appellant but no such opportunity was provided to appellant which means that he was condemned unheard.


7. 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 the 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.

8. For what has been discussed above, we are unison to hold that appellant was condemned unheard. Therefore, we set aside impugned orders, direct the respondent to conduct de-novo inquiry within sixty days by providing opportunity of defense, especially cross examination upon SDPO Rural and complainant. The issue of back benefit shall be decided subject to the outcome of denovo inquiry. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6th day of March, 2024.*



(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

ORDER

06.03.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Atta Ur Rehman, Inspector (Legal) for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to hold that appellant was condemned unheard. Therefore, we set aside the impugned orders, direct the respondents to conduct de-novo inquiry within sixty days by providing opportunity of defense, especially cross examination upon SDPO Rural and complainant. The issue of back benefit shall be decided subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6th day of March, 2024.*


(Fardha Paul)
Member (E)


(Rashida Bano)
Member (J)