

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No. 534/2016

Date of Institution... 20.05.2016

Date of decision... 02.10.2017

Salim Akbar Ex-Constable No. 117, Javid Iqbal Shaheed Police Line Swat District Swat. ... (Appellant)

Versus

1. The Inspector General of Police Department, Khyber Pakhtunkhwa, Peshawar and 2 others. ... (Respondents)

MR. NOOR MUHAMMAD KHATTAK,
Advocate

... For appellant.

MR. ANWARUL HAQ,
Deputy District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. GUL ZEB KHAN,

... CHAIRMAN
... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant being aggrieved from removal from service vide impugned order dated 03.02.2016, filed a departmental appeal which was rejected on 29.04.2016 and thereafter the present service appeal has been filed on 20.05.2016.

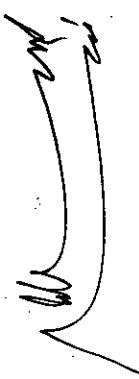
ARGUMENTS

3. The learned counsel for the appellant argued that no charge sheet or statement of allegations were ever served on the appellant. That no show cause

notice was given to the appellant. That no personal hearing was afforded to the appellant. That no regular enquiry was conducted. That no chance of cross examination was given to the appellant nor any chance of defence was afforded to him. He relied upon certain rulings reported as PLJ 2008-S.C-65, 2002-SCMR-433, 2007-SCMR- 1860, 2008-SCMR-1369 and 2011-PLC(C.S)1111.

4. On the other hand the learned Deputy District Attorney argued that the charge sheet alongwith statement of allegations were duly served on the appellant and enquiry was also conducted and the enquiry officer gave his findings holding the appellant guilty and also proposed major punishment. That personal hearing was afforded to the appellant. That the penalty was rightly imposed upon the appellant.

CONCLUSION

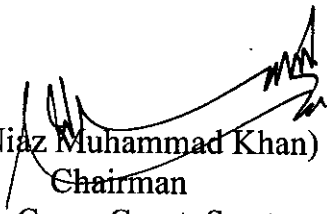


5. The appellant is denying service of charge sheet and statement of allegations but on record the department has annexed copies of charge sheet and statement of allegations. Though the service is not proved on record yet the statement of the witnesses alongwith the appellant has been recorded which shows that departmental enquiry was conducted which is not final proof of service of charge sheet and statement of allegations. Leaving aside this aspect of service or otherwise of charge sheet and statement of allegations there is weight in arguments of the learned counsel for the appellant regarding non provision of opportunity of cross examination to the appellant. No copy of enquiry was provided to the appellant before passing of the final order. There is also no record to show that the appellant was ever given chance of producing his evidence. The appellant has specifically mentioned in the ground of appeal in Para-F that no chance of defence was afforded to him and in reply to this para the department has confined herself

only to the extent of providing personal hearing. It has not been specially mentioned in reply to para F that the appellant was given chance of producing defence evidence. The words mentioned in this respect are "he could not produce cogent reasons". There is difference between producing cogent reasons and producing defence. The department has therefore, admitted that no chance of producing defence was given to the appellant. Non providing of opportunity of defence and failure to afford an opportunity of cross examination is a violation of due process of law and is fatal to the findings of the enquiry officer.

6. As a result of above, the appeal is accepted and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.


(Gul Zeb Khan)
Member


(Niaz Muhammad Khan)
Chairman
Camp Court, Swat

ANNOUNCED
02.10.2017

2.10.2017

Counsel for the appellant and Mr. Anwarul Haq, Deputy District Attorney alongwith Mr. Khawas Khan, S.I (Legal) for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of to-day, this appeal is accepted. Parties are left to bear their own costs. File be consigned to the record room.

Member


Chairman
Camp Court, Swat.


ANNOUNCED

2.10.2017

534/16

06.10.2016

None present for the appellant. Mr. Khawas Khan, SI (Legal) alongwith Mian Amir Qadir, GP for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 08.02.2017 at camp court, Swat.


Chairman
Camp Court, Swat

08.02.2017

None present for the appellant. Mr. Muhammad Zubair, Senior Government Pleader for the respondents present. Notice be issued to appellant and his counsel. To come up for rejoinder and final hearing on 06.06.2017 before D.B at camp court, Swat.


Member


Chairman
Camp court, Swat

08.06.2017

Since the tour programme for the month of June, 2017 to camp court Swat has been cancelled by the Worthy Chairman, therefore. to come up for the same on 02.10.2017 at camp court. Swat. Notices be issued to the parties for the date fixed accordingly.


Registrar

24.05.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as constable when removed from service vide impugned order dated 03.02.2016 on the allegations of professional mis-conduct where-against he preferred departmental appeal which was also rejected vide order dated 29.04.2016 and hence the instant service appeal on 20.05.2016.

That neither any regular enquiry was conducted nor opportunity of hearing extended to the appellant.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 25.07.2016 before S.B.

Appellant Deposited
Security & Process Fee
29/5/16


Chairman

25.07.2016



Counsel for the appellant present. None present on behalf of the respondents. The case pertains to territorial limits of Malakand Division, therefore, the same is fixed for written reply/comments on 6.10.2016 before S.B at camp court, Swat. Fresh notices be issued to the respondents for the date fixed.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 534/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	20/05/2016	<p>The appeal of Mr. Saleem Akbar presented today by Mr. Noor Muhammad Kattak Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	23-5-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>24-5-16</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 534 /2016

SALIM AKBAR

VS

POLICE DEPTT:

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APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 534 /2016

N.W.F. Province
Service Tribunal
Diary No. 511
Dated 20/5/2016

Mr. Salim Akbar, Ex: Constable No. 117,
Javid Iqbal Shaheed Police Line Swat, District Swat.

..... APPELLANT

VERSUS

- 1- The Inspector General of Police Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Deputy Inspector General of Police, Malakand Range Swat at Saidu Sharif.
- 3- The District Police Officer, District Swat.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 3.2.2016 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE WAS IMPOSED ON THE APPELLANT WITHOUT CONDUCTING REGULAR INQUIRY IN THE MATTER AND AGAINST THE APPELLATE ORDER DATED 29.4.2016 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this appeal the impugned orders dated 3.2.2016 and 29.4.2016 may very kindly be set aside and the respondents may be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant was appointed in the respondent Department as Constable. That right from appointment the appellant has served the respondent Department quite efficiently and up to the entire satisfaction of his superiors.

That appellant while serving as constable in the respondent Department has received the impugned order dated 3.2.2016 whereby the respondent No.3 removed the appellant on the allegation that appellant on 19.9.2015 had

Handwritten notes:
20/5/16
[Signature]

drunk liquor and found in unconscious condition. Copy of the impugned order is attached as annexure **A.**

- 2- That appellant feeling aggrieved from the impugned order dated 3.2.2016 filed Departmental appeal before the respondent No.2 in which the appellant denied the allegation and also requested for regular inquiry in the matter. That the same was rejected by the respondent No.2 on no good grounds vide impugned appellate order dated 29.4.2016. Copies of the Departmental appeal and rejection order are attached as annexure **B & C.**
- 3- That appellant feeling aggrieved from the impugned orders dated 3.2.2016 and 29.4.2016 filed the instant appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned orders dated 3.2.2016 and 29.4.2016 issued by the respondent No.2 & 3 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondent No.2 & 3 acted in arbitrary and malafide manner while issuing the impugned orders dated 3.2.2016 and 29.4.2016.
- D- That no charge sheet and statement of allegation has been served on the appellant by the respondent No.3 while issuing the impugned order dated 3.2.2016.
- E- That no show cause notice has been served on the appellant before issuing the impugned order dated 3.2.2016.
- F- That no chance of personal hearing/ defense has been given to the appellant before issuing the impugned orders dated 3.2.2016 and 29.4.2016.
- G- That no regular Departmental nor fact finding inquiries were conducted by the respondents before issuing the impugned order dated 3.2.2016 against the appellant which is as per Supreme Court Judgments is necessary in punitive actions against the civil servant.

H- That no fact finding inquiry has been conducted in the matter nor the complainant was cross examined by the appellant, therefore the impugned order dated 3.2.2016 is void ab initio on this score alone.

I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may accepted as prayed for.

Dated: 19.5.2016

APPELLANT


SALIM AKBAR

THROUGH:


**NOOR MOHAMMAD KHATTAK
ADVOCATE**

ORDER

A-4

This order will dispose off the departmental enquiry against Constable Salim Akbar No.117 while posted to JIS Police Lines, as per report of RI, JIS Police Lines, on 19/09/2015. He has drinking liquor and found in unconscious condition by IHC Farman of Police Station Kanju at Nengwali. On enquiry we have also accepted your offence. This act is against the law as well as the rules and regulations of the disciplined force.

He was issued Charge Sheets alongwith statement of Allegations and SDPO/Saidu, Circle was deputed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent officers and recorded the statements of all concerned officers. He has provided ample opportunity to the delinquent officers to defense the Charges rendered by him. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein he recommended the delinquent Officer for Major punishment. Was called in Orderly Room On 02-022016.

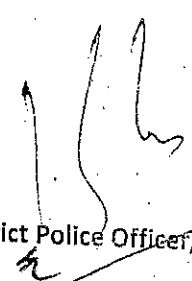
Having perused his service record, it was patently evident that the delinquent of Constable Salim Akbar No.117. Forgoing in view the undersigned is of considered opinion that there are no chances that Constable Salim Akbar No.117 become an efficient Police Officer. His further retention in service is bound to affect the discipline of the entire force. Therefore, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules-1975, I, Muhammad Saleem Marwat, P.S.P, District Police Officer, Swat as a competent authority, am constrained to award him the punishment of Removal from service with immediate effect.

Order announced.

O.B. No. 21-

Dated 03 / 02 / 2016.

Attested
By


District Police Officer, Swat

وجوہات:

6

- i- یہ کہ حکم معترض خلاف قانون، خلف ضابطہ، خلاف واقعات اور خلاف انصاف ہے بدیں وجہ قابل منسوخی ہے۔
- ii- یہ کہ سائل / ایپلنٹ کے ضعیف العمر والدین کے علاوہ چھوٹے چھوٹے بچے ہیں۔ اور سائل / ایپلنٹ کی تنخواہ ہی سے پورے گھرانے کی کفالت ہوتی ہے۔ من سائل کا کوئی دیگر روزگار یا ذریعہ معاش نہیں ہے جبکہ عمر کے اس مرحلے میں من سائل کوئی دوسرا کام نہیں کر سکتا۔ بدیں وجہ معترضہ قابل منسوخی ہے۔
- iii- یہ کہ حکم معترضہ صادر کرنے سے پہلے از روئے قانون ضروری تھا۔ کہ سائل / ایپلنٹ کو کوئی سوا کارڈ نوٹس یا چارٹریٹ دیا جاتا ہے۔ چونکہ سائل / ایپلنٹ کو اس نسبت کی قسم کی شکوکا ز نوٹس یا چارج ٹیٹ نوٹس نہیں دیا گیا ہے بدیں وجہ معترضہ مذکورہ قابل منسوخی ہے۔
- iv- یہ کہ سائل کی تنخواہ ہی پر سائل کے پورے خاندان کی کفالت اٹھار ہے۔ جبکہ سائل اندر وقتاً طارے گا۔ اور افران بالاک ہر حکم کا تابع رہیگا۔ اور کسی قسم کی شکایت کا موقع فراہم نہیں کریگا۔

لہذا استدعا ہے کہ بحظوری رحم اپیل ہذا حکم معترضہ مذکورہ کو کالعدم اور منسوخ فرمائی جا کر سائل / ایپلنٹ کو تازہ ترخ برضاگی سے جملہ مراعات سرکاری کے ساتھ نوکری پر بحال فرمائی جائے۔ تو سائل / ایپلنٹ اور سائل / ایپلنٹ کے ضعیف العمر والدین اور چھوٹے چھوٹے بچے آپ صاحبان کے لئے تادم حیات دعاگوں رہینگے۔

شکوہ

عرضاً

سابقہ کنستبل سلیم آکبر نمبر 117 سوات ڈسٹرکٹ پولیس
ستخین: جاویداقبال شہید پولیس لائن کابل ضلع سوات

Attested
by

From: The District Police Officer, Swat
To: The Regional Police Officer,
Malakand Region, Saidu Sharif Swat.

7

No. 2713 /E, dated Guikada the 10-3-2016

Subject: APPEAL

Memorandum:


Kindly refer to your Office memo No. 1546/E, dated 12-02-2016.

Brief facts of the case are such that Constable Salim Akbar No. 117 while posted to JIS Police Lines, as per report of RI, JIS Police Lines, on 19-09-2015. Who found drunkard in unconscious condition by IHC Farman of Police Station Kanju at Nengwail. The delinquent official also admitted his guilt. His that act was against the law as well as the rules and regulations of the disciplined force.

He was issued Charge Sheet alongwith statement of allegations and SDPO/Saidu, Circle was deputed as enquiry officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent official and recorded the statements of all concerned officers. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein he recommended the delinquent official for Major punishment.

Being found guilty of the charges the DPO Swat removed him from service vide OB NO. 210 dated 03-02-2016.

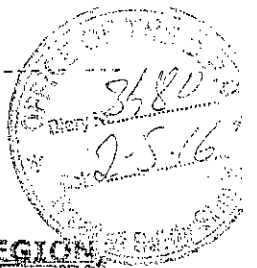
In view of the above facts and circumstances the appeal of the applicant may kindly be filed.


District Police Officer, Swat

C Encl: 3- Record +
F. 19/22/16

Attended


C-8



**OFFICE OF THE REGIONAL POLICE OFFICER, MALAKAND REGION,
AT SAIDU SHARIF SWAT**

ORDER:

This order will dispose off appeal of Ex-Constable Salim Akbar No. 117 of Swat District for reinstatement in service.

Brief facts of the case are that Ex-Constable Salim Akbar No. 117 while posted to JIS Police Lines, Swat was found drunkard in unconscious condition by IHC Farman of Police Station Kanju at Nengwali. The delinquent official also admitted his guilt. His that act was against the law as well as rules and regulations of the disciplined force.

He was issued Charge Sheet alongwith statement of allegations and SDPO/Saidu, Circle was deputed as enquiry officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent official and recorded statements of all concerned officers. After conducting proper departmental enquiry, the enquiry officer submitted his findings wherein he recommended the delinquent official for major punishment.

Being found guilty of the charges the District Police Officer, Swat removed him from service vide OB No. 210 dated 03/02/2016.

He was called in Orderly Room on 29/04/2016 and heard him in person. The appellant did not produce any substantial materials in his defense. Even he was still in unconscious condition. Therefore, I uphold the order passed by the District Police Officer, Swat, whereby the appellant has been awarded punishment of dismissal from service. The appeal is rejected.

Order announced

(AZAD KHAN) TSP, PGP
Regional Police Officer,
Malakand, at Saidu Sharif Swat

No. 4052 /E,

Dated 29-4- /2015.

Copy to the District Police Officer, Swat with reference to his office Memo: No. 2713/E, dated 10/03/2016. His service records are returned.

FC
For all

[Signature]
D. P. Swat

Attested
[Signature]

PLJ 2008 SC 65

[Appellate Jurisdiction]

Present: Javed Iqbal, ACJ and Sardar Muhammad Raza Khan, J.

EXECUTIVE ENGINEER, QADIRABAD BARRAGE DIVISION, QADIRABAD, etc.--Appellants
versus

EJAZ AHMAD--Respondent

Civil Appeal No. 2206 of 2006, decided on 30.5.2007.

(On appeal from the judgment dated 26.7.2006 in Appeal No. 480/2005 passed by Punjab Service Tribunal, Lahore).

Punjab Removal From Service (Special Powers) Ordinance, 2000--

---S. 3(2)--Constitution of Pakistan, 1973--Art. 212(3)--Civil servant--
Disciplinary action initiated on account of inefficiency and misconduct--Civil
servant was reinstated by tribunal--Leave to appeal--Glaring illegalities have
been committed during disciplinary proceedings by department which cannot be
equated to that of "procedural" lapses--No show-cause notice--Validity--Fair
opportunity of hearing was not afforded to civil servant to defend his case
properly which is not only flagrant violation of the provisions of the Punjab
Removal from Service (Special Powers) Ordinance, 2000, but well recognized
principles of natural justice and is sufficient to vitiate the entire
proceedings--Appeal was dismissed. [P. 67] A

Ms. Afshan Ghazanfar, AAG for the Appellants.

Mr. G.N. Gauhr, ASC/AOR for the Respondent.

Date of hearing: 30.5.2007.

Judgment

Javed Iqbal, ACJ.--Pursuant to disciplinary action initiated on account of
inefficiency and misconduct, the respondent was dismissed from service but
reinstated by the learned Punjab Service Tribunal by means of judgment impugned,
hence this appeal.

2. Leave to appeal was granted vide order dated 17.11.2006 which is reproduced
herein below for ready reference:--

"Ch. Aamir Rehman, Additional Advocate General, Punjab submitted that the Punjab
Service Tribunal had mis-directed itself in reinstating the respondent in service
by the impugned judgment dated 26.7.2005 after it had found that he had not
carried out the repair work and had been absent from duty and rude to his
superiors.

2. Leave to appeal is granted to consider, inter alia the above and the other
submissions. The office is directed to set down the main appeal on its present
record, within a period of 6 months".

3. Ms. Afshan Ghazanfar, learned Assistant Advocate General entered appearance on
behalf of Executive Engineer (appellant) and contended that factum of willful
absence and misbehaviour have not at all been adverted to by learned Service
Tribunal which resulted in serious miscarriage of justice. It is next contended
that procedural lapses should not have been given undue importance as no prejudice
whatsoever was caused against the respondent.

4. A careful scrutiny of the entire record would reveal that glaring
illegalities have been committed during the disciplinary

SC Ayaz Baig v. State PLJ
(Sardar Muhammad Raza Khan, J.)
2008 Ayaz Baig v. State SC
(Sardar Muhammad Raza Khan, J.)

proceedings by the department which cannot be equated to that of "procedural lapses" as contended by learned Assistant Advocate General. It is worth mentioning that the disciplinary proceedings were initiated under the Punjab Removal From Service (Special Powers) Ordinance, 2000 but amazing no show-cause notice was given as envisaged under Section 3 (2) of the Ordinance and besides that fair opportunity of hearing was not afforded to the respondent to defend his case properly which is not only a flagrant violation of the provisions of the said Ordinance but well recognized principles of natural justice and is sufficient to vitiate the entire proceedings. In view of above grave illegalities committed by the department the learned Service Tribunal has rightly held that respondent/department may initiate afresh action against the appellant strictly in accordance with law. The prescribed procedure which is mandatory in nature must be followed and it cannot be flouted on the pretext that the alleged charges against a government employee are serious in nature.

A

The judgment impugned being unexceptionable does not warrant interference. The appeal being devoid of merit is dismissed.
(R.A.) Appeal dismissed.

2007 S C M R 1860

[Supreme Court of Pakistan]

Present: Javed Iqbal, Actg. C.J. and Sardar Muhammad Raza Khan, J

EXECUTIVE ENGINEER, QADIRABAD BARRAGE DIVISION QADIRABAD and others----Appellants

Versus

EJAZ AHMAD----Respondent

Civil Appeal No.2206 of 2006, decided on 30th May, 2007.

(On appeal from the judgment, dated 26-7-2006 in Appeal No.480 of 2005 passed by Punjab Service Tribunal, Lahore).

(a) Punjab Removal from Service (Special Powers) Ordinance (XVII of 2000)---

----S. 3---Constitution of Pakistan (1973), Art.212 (3)---Leave to appeal was granted by Supreme Court to consider; whether Service Tribunal misdirected itself in reinstating civil servant in service after it had found that he did not carry out repair work and had been absent from duty and was rude to his superiors.

(b) Punjab Removal from Service (Special Powers) Ordinance (XVII of 2000)---

----S. 3---Reinstatement in service---Principles of natural justice---Applicability---Show-cause notice, non-issuance of---Effect---Disciplinary proceedings were initiated under Punjab Removal from Service (Special Powers) Ordinance, 2000, but no show-cause notice was issued to civil servant and he was dismissed from service---Service Tribunal allowed the appeal of civil servant and reinstated him in service---Validity---By not giving show-cause notice to civil servant as envisaged under S.3 (2) of Removal from Service (Special Powers) Ordinance, 2000, fair opportunity of hearing was not afforded to him to defend his case properly---Such was a flagrant violation of the provisions of Removal from Service (Special Powers) Ordinance, 2000, and principles of natural justice and was sufficient to vitiate the entire proceedings---When such grave illegality was committed by department, Service Tribunal had rightly found that authorities might initiate fresh action against civil servant---Prescribed procedure which was mandatory in nature must be followed and it could not be flouted on the pretext that alleged charges against government employee were serious in nature---Supreme Court declined to interfere with judgment passed by Service Tribunal---Leave to appeal was refused.

Ms. Afshan Ghazanfar, A.A.-G. for Appellants.

G.N. Gauhar, Advocate Supreme Court/Advocate-on-Record for Respondent.

Date of hearing: 30th May, 2007.

JUDGMENT

JAVED IQBAL, ACTG. C.J.--- Pursuant to disciplinary action initiated on account of inefficiency and misconduct, the respondent was dismissed from service but reinstated by the learned Punjab Service Tribunal by means of judgment impugned, hence this appeal.

2. Leave to appeal was granted vide order, dated 17-11-2006 which is reproduced hereinbelow for ready reference:--

"Ch. Aamir Rehman, Additional Advocate-General, Punjab submitted that the Punjab Service Tribunal had misdirected itself in reinstating the respondent in service by the impugned judgment, dated 26-7-2005 after it had found that he had not carried out the repair work and had been absent from duty and rude to his superiors.

(2) Leave to appeal is granted to consider, inter alia the above and the other submissions. The office is directed to set down the main appeal on its present record, within a period of 6 months."

3. Ms. Afshan Ghazanfar, learned Assistant Advocate-General entered appearance on behalf of Executive Engineer (appellant) and contended that factum of wilful absence and misbehaviour have not at all been adverted to by learned Service Tribunal which resulted in serious miscarriage of justice. It is next contended that procedural lapses should not have been given undue importance as no prejudice whatsoever was caused against the respondent.

4. A careful scrutiny of the entire record would reveal that glaring illegalities have been committed during the disciplinary proceedings by the Department which cannot be equated to that of "procedural lapses" as contended by learned Assistant Advocate-General. It is worth-mentioning that the disciplinary proceedings were initiated under the Punjab 'Removal from Service (Special Powers) Ordinance, 2000 but amazing no show-cause notice was given as envisaged under section 3(2) of the Ordinance and besides that fair opportunity of hearing was not afforded to the respondent to defend his case properly which is not only a flagrant violation of the provisions of the said Ordinance but well-recognized principles of natural justice and is sufficient to vitiate the entire proceedings. In view of above grave illegalities committed by the Department the learned Service Tribunal has rightly held that respondent-Department may initiate afresh action against the appellant strictly in accordance with law. The prescribed procedure which is mandatory in nature must be followed and it cannot be flouted on the pretext that the alleged charges against a Government employee are serious in nature.

The judgment impugned being unexceptionable does not warrant interference. The appeal being devoid of merit is dismissed.

M.H./E-2/SC

Appeal dismissed.

DISCIPLINARY ACTION

Mr. Muhammad Saleem Marwat P.S.P District Police Officer, Swat as competent
is of the opinion that he Constable Salim Akbar No.117 while posted as IIS Police Lines has
acted against departmentally as he has committed the following

Case Judgement

<http://www.plsbeta.com/LawOnline/law/content21.asp?Cases=20...>

2008 S C M R 1369

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C. J., Ijaz-ul-Hassan Khan and Ch. Ejaz Yousaf, JJ

NASEEB KHAN---Petitioner

Versus

DIVISIONAL SUPERINTENDENT, PAKISTAN RAILWAYS, LAHORE and another---
Respondents

Civil Petition for Leave to Appeal No.466 of 2008, decided on 26th May, 2008.

(On appeal from the judgment, dated 23-1-2008 passed by Federal Service Tribunal in Appeal No.397(R) of 2007).

Removal from Service (Special Powers) Ordinance (XVII of 2000)---

---S. 5---Misconduct---Dismissal from service---Non-holding of departmental Enquiry---Violation of principles of natural justice---Effect---Held, in case of imposing a major penalty, the principles of natural justice required that a regular enquiry was to be conducted in the matter and opportunity of defence 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.

Pakistan International Airlines Corporation v. Ms. Shaista Naheed 2004 SCMR 316 and Inspector-General of Police, Karachi and 2 others v. Shafqat Mehmood 2003 SCMR 2007 ref.

Abdul Rehman Siddiqui, Advocate Supreme Court with Arshad Ali Chaudhry, Advocate-on-Record for Petitioner.

Qamar Zaman, Clerk, Litigation Branch for Respondents.

Date of hearing: 26th May, 2008.

JUDGMENT

IJAZ-UL-HASSAN KHAN, J.--- Through instant petition under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973, Naseeb Khan, petitioner, seeks leave against judgment, dated 23-1-2008 of learned Federal Service Tribunal, Islamabad, whereby appeal of the petitioner, challenging his dismissal from service, has been dismissed, in limine, being barred by time.

2. Precisely stated facts of the case as gathered from the record are, that petitioner joined service of respondent-Department as Junior Commercial Assistant Booking (BS-5) on 26-3-1998 and served as such for 14 years. On 10-11-2001 due to demise of his wife, petitioner proceeded on leave. Petitioner

(76)

Annex C

A-C

ادفتر DSP سپرمرگل

ریڈ نمبر 3 سورج 05-01-2016

فائنڈنگ رپورٹ

عنوان:- حکمانہ کارروائی بر خلاف کنستبل سلیم اکبر 117 متعینہ پولیس لائن کبل سوات

غلاصہ الزام:- کنستبل سلیم اکبر 117 متعینہ پولیس لائن کبل سوات پر الزام ہے۔ کہ مذکورہ کنستبل نے 19-09-2015 کو شراب نوشی کا مرتکب ہوا ہے۔

تفصیلی تحقیق:- انکوائیری ہذا میں اصل حقائق منظر عام پر لانے کے خاطر مذکورہ کنستبل پر سچ ٹیسٹ چھبھٹا گیا۔ اس کے جواب کیساتھ جمع کر کے تفصیلی بیان بھی لیا جا کر شمال انکوائیری ہوئی۔ اسی طرح نقلد رپورٹ پر کنستبل مذکورہ اور دیگر محرز پولیس لائن کبل حاصل کر کے لفٹ اور قابل ملاحظہ ہے۔

راستہ انکوائیری آفسر:- کردہ انکوائیری، بیانات اور ریکارڈ سے عیاں ہے کہ کنستبل سلیم اکبر 117 سورج 05-01-2016 کو شراب نوشی کرتے ہوئے پایا گیا ہے۔ کنستبل مذکورہ جرم خود سے اقراری ہے۔ مذکورہ کنستبل کی شراب نوشی باعث بدنامی ہے

لہذا کنستبل سلیم اکبر 117 کو (Major Punishment) دینے کی سفارش کی جاتی ہے۔

15-03-2016

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بیان حکیم جان محمد دوس لہرن کبر سوانہ

بیان کہ تم بٹھرون سلیم بکر 117 - سید عالم $\frac{439}{594}$ دوس لہرن کبر میں تھیاں تے۔
 خورون خوب روکم افسران بالا فینک ڈویسی کیکہ دفتر خباب 080 ماہ اولی
 کتے۔ فینک میں صبح سے نام جاری تے کہ ڈویسی تے بہ خورون افسران بالا
 حکم دے گھروں آری جتے تے۔ بروز وقوع حورہ $\frac{19}{05}$ حکم دے گھروں
 کونشہ کی حالت میں پکڑے تے تے۔ جو ابروون خباب 080 ماہ اولی
 تے۔ ریگوریشن سلیم بکر 117 کو مسلک تے تے۔ جتے سید عالم $\frac{439}{594}$
 جی دوس لہرن کبر میں دوس لہرن کبر میں تھیاں تے تے۔
 عاری تے۔ جتے دوس لہرن کبر میں تھیاں تے تے۔
 ابروون خباب R حاب میراہ تے تے۔ جتے سید عالم $\frac{439}{594}$
 تے۔

MASIRI KHALI
 10/12/05

Attested
 DP. Suley

④ Anexos

1915

1915 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

D/2

33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

Handwritten notes in Arabic script, including a calculation: $\frac{437}{58} \approx 7.53$ and $\frac{117}{12} = 9.75$. The text discusses various topics, possibly related to a project or report, with several lines of dense handwriting.

Handwritten signature and date:
Signature:
Date: 09-12-15

بیان ازان کس کے لیے 117

D متعلقہ پولیس لائن 157

2 بہ دریافت کیا کہ اس سال 2010 کو حکومت نے
 عدلیہ پولیس میں کئی عوارضوں اور نا اہل ایسا گروپ بنائے
 ایجنڈوں سے سرعام رہ رہے ہیں۔ میں کافی عرصے سے
 کے بارے میں متذکرہ عوارضوں کا نام لیتا رہا اور ان
 حوالہ سے کئی دفعہ ایک تقریب پر خطاب کیا اور ان
 سے متعلق ایک ریسپونڈنگ ٹیم کے ساتھ ساتھ
 کئی نوٹوں سے وہیں لایا گیا اور ان کے
 کے بارے میں کئی دفعہ متذکرہ ایجنڈوں کے
 ایک سائیکل پر اس کے کوشش کی گئی
 حال پونڈرہ، راجہ کا ریسپونڈنگ ٹیم
 میں ایک بار اسٹیشن کھانچا جلا گیا
 اسٹیشن پر اس وقت میں اسٹیشن پر
 جے میں پورے دن باہر ہیں وہاں کے
 اس بار، ماضی وہی طریقہ اسٹیشن پر

Allsted

DSP. Saeed

⑪ Annexed B

A-④

ORDER

This order will dispose off the departmental enquiry against Constable Salim Akbar No.117 while posted to JIS Police Lines, as per report of RI, JIS Police Lines, on 19/09/2015. He has drinking liquor and found in unconscious condition by IHC Farman of Police Station Kanju at Nengwalli. On enquiry we have also accepted your offence. This act is against the law as well as the rules and regulations of the disciplined force.

He was issued Charge Sheets alongwith statement of Allegations and SDPO/Saidu, Circle was deputed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent officers and recorded the statements of all concerned officers. He has provided ample opportunity to the delinquent officers to defense the Charges rendered by him. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein he recommended the delinquent Officer for Major punishment. Was called in Orderly Room On 02-022016.

Having perused his service record, it was patently evident that the delinquent of Constable Salim Akbar No.117. Forgoing in view the undersigned is of considered opinion that there are no chances that Constable Salim Akbar No.117 become an efficient Police Officer. His further retention in service is bound to affect the discipline of the entire force. Therefore, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules-1975, I, Muhammad Saleem Marwat, P.S.P, District Police Officer, Swat as a competent authority, am constrained to award him the punishment of Removal from service with immediate effect.

Order announced.

District Police Officer, Swat

O.B. No. 21-

Dated 03/02/2016.

Attested
B

2
1

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2204 /ST

Dated 10 / 10 / 2017

To


The District Police Officer,
Government of Khyber Pakhtunkhwa,
Swat.

Subject: -

JUDGMENT IN APPEAL NO. 534/2016, MR. SALIM AKBAR.

I am directed to forward herewith a certified copy of Judgement dated 2.10.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

(6) 56

Due to promotion of senior most senior clerk to the rank of Accounts Clerk, a post of Senior Clerks become vacant, the committee examine the seniority / fitness of the following senior most Junior Clerks:

S.No.	Name & Designation	Date of Birth	Date of Appointment
1.	Mr. Muhammad Younas Junior Clerk	24/05/1973	04/12/1994
2.	Mr. Shafiqat Ullah Junior Clerk	10/02/1974	21/03/1995
3.	Mr. Farwar Khan Junior Clerk	31/03/1969	14/11/1996
4.	Mr. Mustageem Khan Junior Clerk	09/02/1968	01/08/1997

The committee after examination considered the promotion of the following official to the post of Senior Clerk on the basis of seniority / cum fitness. Hence the committee clears the promotion of the following Junior Clerks to the post of Senior Clerks:

S.No.	Name & Designation	Date of Birth	Date of Appointment
1.	Mr. Muhammad Younas Junior Clerk	24/05/1973	04/12/1994

Due to promotion of 1-No Junior-Clerk to the post of Senior Clerk and 15-Nos Junior Clerk posts are also lying vacant due to promotion of Junior Clerk to the rank of Senior Clerks. Hence 6-No Posts of Junior Clerk become vacant.

In view of Govt. of NWFP E&AD letter /Notification No.SOR(E&AD)1-3/2003 dated 22-10-2005 the appointing authority may appoint one of the children of decess civil servant who died during service to the post of BPS-1 to 15.

To fill up the above vacancy the Departmental Promotion/ Selection Committee consider the appointment son of decess Govt. servants.

It is worth mentioning that due to death of Imtiaz Ahmad Tubewell Operator his son Haroon Ahmad consider for appointment as a Junior Clerk.

In view of Government of NWFP S&GAD Department notification No.SOR-IV(S&GAD) 1-1/95(D), dated 13/07/1997, 33% quota is specified for class-IV Government Servants / employee.

The Departmental Promotion / Selection Committee considered the service record, qualification, experience and type test of the following Class-IV employee borne on the Circle Cadre strength:

S.No	Name & Designation	Qualification	Date of Appointment or Promoted	Office to which attached
1	Saqib Zaman Beldar	Metric	24-02-2004	Marwat Canal
2	Gul Zaman Barkandaz	Metric	1984	Paharpur
3	Muhammad Tariq Barkandaz	Metric	02-2004	Marwat Canal
4	Daulat Khan Gauge Reader	Metric	03-04-2007	Bannu Canal
5	Farid Khan Dastare	Metric	16-4-2007	Bannu Canal
6	Waris Khan Chowkidar	Metric	20-12-1995	Bannu Canal
7	Muhammad Sohail Beldar	M.A	19-01-2010	Bannu Canal
8	Inam Ullah Shah Mate	Metric	18-02-2009	Bannu Canal
9	Magsood Ullah T/Well Operator	Metric	01-03-2008	Bannu Canal
10	Abdul Wahab Gauge Reader	Metric	14-01-2010	Bannu Canal
11	Hazrat Ali Chowkidar	Metric		Bannu Canal
12	Han Nawaz Driver	Metric	22-07-2006	Bannu Canal
13	Abdul Waheed Basta Bardar	Metric	2001	CRBC
14	Shahid Ullah Dastri	Metric	17-11-1994	CRBC
15	Shadan Gul Work Munshi	Metric	02-01-2010	Marwat Canal
16	Aisar-Rehman Naib Qasid	Metric	16-4-1996	Bannu Canal
17	Aamir Ur Rahman Driver	F.A	22/11/2010	Circle office
18	Khizar Hayat Beldar	Metric	05-1996	Circle Office
19	Rafi Ullah R/Beldar	F.A	2006	Paharpur
20	Muhammad Rehan Chowkidar	Metric		Paharpur

The officials at serial No. 04, 07, 08, 14, 15, 16 and 19 were absent from interview and test.

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