

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.278/2023

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

Muhammad Usman, IHC No.911, Incharge Chowki Chpri, presently Police Line Nowshera.

..... (Appellant)

VERSUS

1. District Police Officer Nowshera.
2. Regional Police Officer Mardan.

..... (Respondents)

Mr. Kabir Ullah Khattak
Advocate ... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For respondents

Date of Institution.....06.02.2023
Date of Hearing.....18.03.2024
Date of Decision.....18.03.2024

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 orders dated 21.09.2022 and 06.01.2023 may kindly be set aside and



the minor punishment of forfeiture of one year approved service may kindly be restored in favour of appellant alongwith with all back benefit. Any other remedy which this Tribunal deems fit and appropriate that may also be awarded in favour of appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was serving the Police Department quite efficiently and was performing his duties with full devotion and no complaint whatsoever had been made against the appellant. During service appellant was proceeded against departmentally on the allegations that he while posted as Incharge Police Post Chappri, on 01.09.2022, Mst. Naseem Begum reported to him that some unknown accused entered her house, severely beat her and her husband and committed robbery but he failed to treat that report as per law. Show cause notice was served upon the appellant, which was properly replied by negating the allegation. Thereafter, on 21.09.2022 the impugned order was issued against the appellant whereby penalty of censure was awarded to him. Appellant filed departmental appeal on 17.10.2022, which was rejected on 06.01.2023, 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 appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the impugned order is void because it has been issued without fulfilling the codal formalities; that no charge sheet and statement of allegation has been issued to the appellant which was mandatory as per Rule-6 (A) of the Police Rules 1975; that no regular inquiry has been conducted by the respondents and no chance of personal hearing has been provided to the appellant and he was condemned unheard.

5. Conversely learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant while posted as Incharge Police Post Chappri, one Mst. Naseem Begum reported him that some unknown accused entered her house, severely beaten her and her husband and committed robbery but he failed to treat the matter as per law, despite the fact that such a heinous crime had been committed, rather to lodge FIR promptly, the report was entered into daily diary. He further contended that final show notice was issued to which he submitted his reply but the same was found unsatisfactory and the impugned penalty was passed after fulfillment of all codal formalities.


6. Perusal of record reveals that appellant was serving in respondent department as IHC Incharge of Police Post Chappri, when on 01/09/2022 one Mst. Naseem Begum reported an incident on 01.09.2022 that some unknown

 accused entered her home, severely beat her and her husband and committed

robbery. Being Incharge of police post, it was duty of the appellant to treat them as per law and get medico legal opinion but he failed to do so and on 03/09/2022, husband of the appellant died.

7. Authority issued show cause notice on 06/09/2022 to the appellant by adopting general police proceedings without aid of inquiry officer. Authority although decided to dispense with inquiry but no plausible reason was given by the authority to dispense with it. Authority was bound under the rules to give reasons for dispensing with regular inquiry. Appellant in his reply mentioned that complainant Mst. Naseem and her husband decided not to conduct medical examination of all the three, including deceased. It is incumbent upon the authority to know the truth and genuineness of the appellant's assertion about not to get medical legal opinion and in this respect to record statement of complainant and her daughter. But by dispensing with inquiry, statements were not recorded.

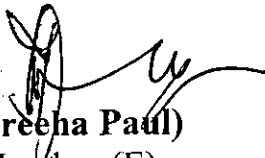
8. Moreover it was observed that generally in robbery cases of unknown accused, usually all police officials are reluctant to lodge FIR immediately, without inquiry. First they inquire the matter and then after satisfaction, lodge the FIR. It is a general principle of fair trial that when serious allegations of misconduct had been levelled against the employee, then it would stigmatize his entire service career and in such eventuality employee must have fair chance of defence in regular inquiry. Opportunity of fair trial had not been afforded to the appellant by depriving him right of cross-examining the



witnesses, as such it could be held that principle and procedures of due process of law and fair trial had not been followed, which were against the principle of natural justice.

9. It is mentioned in the show cause notice that video clip of the incident went viral on social media, it means that due to social media pressure, present appellant was condemned unheard and his career was stigmatized which is not just and unwarranted under the rules. Therefore, the impugned orders are set aside and respondents are directed to conduct proper inquiry, strictly in accordance with rules within a period of sixty days after receipt of copy of this judgment. The issue of back benefits shall be subject to the outcome of proper inquiry. Costs shall follow the event. Consign.


10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of March, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

ORDER
18.03.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, the impugned orders are set aside and respondents are directed to conduct proper inquiry, strictly in accordance with rules within a period of sixty days after receipt of copy of this judgment. The issue of back benefits shall be subject to the outcome of proper 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 18th day of March, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)