

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1092/2022

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

Zar Khan Ex-FC No. 53, Police Lines Nowshera.....(*Appellant*)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan Region Mardan.
3. The District Police Officer, Nowshera.(*Respondents*)

Mr. Taimur Ali Khan,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

Date of Institution.....	29.06.2023
Date of Hearing.....	20.03.2024
Date of Decision.....	20.03.2024

CONSOLIDATED JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of the instant service appeal as well as connected service appeal No. 1072/2022, titled “Murad Ali Versus the Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others”, as in both the appeals, common questions of law and facts are involved.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 31.12.2020, whereby major penalty of reduction in pay by two stages for a period of 02 years was imposed upon the appellant, order dated 02.08.2021 whereby on the departmental appeal of the appellant the penalty was converted into dismissal from service and against the order dated 02.06.2022 whereby the

revision petition of the appellant was rejected. It has been prayed that on acceptance of the appeal, the impugned orders dated 31.12.2020, 02.08.2021 and 02.06.2022 might be set aside and the appellant be reinstated into service with all back and consequential benefits, alongwith any other remedy which the Tribunal deemed appropriate.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed in the respondent department in the year 2015. A-1 examination was conducted by ETEA authority on 01.11.2020 in District Charsadda and the appellant went with his friend, namely Constable Sohail, as he was going to take A-1 examination. The appellant, during examination, was waiting outside the examination centre for his friend Sohail when some constables, who were the candidates of A-1 examination, took out their papers to solve the same with the help of their colleagues. When the examiner came out from the Centre, they escaped, however, the appellant alongwith some other persons did not leave the spot and the examiner took him alongwith others to the examination centre. Sohail told the examiner that he (present appellant) came with him only for the purpose of company but he was taken to the Police Station City Charsadda and the concerned DSP,SHO after proper investigation left him alongwith others being innocent. On the basis of incident, the appellant was suspended from service vide order dated 09.11.2020 and charge sheet alongwith statement of allegations was issued to him with the allegations that he appeared unlawfully in A-1 Examination held by ETEA authority on 01.11.2020, by impersonating himself as Constable Sohail No. 419, Reader ASP Cantt (actual candidate), which amounted to grave misconduct on his part. The appellant submitted reply and denied the



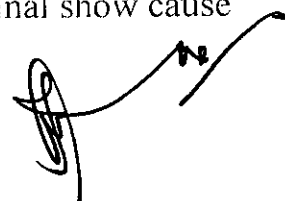
allegations leveled against him and gave the real facts about the issue. Inquiry was conducted which was not according to the prescribed procedure, as statements were not recorded during the inquiry proceedings, and the Inquiry Officer gave his findings that the appellant was present at the examination centre during A-1 examination at District Charsadda, and on the basis of his presence at the location of examination centre, he was recommended for major punishment. Respondent No. 3 directed the inquiry officer to conclude the evidence by recording statements of different officials but despite that, the Inquiry Officer did not record the statements in the presence of the appellant nor gave him opportunity of cross examination and recommended him for major punishment. Show cause notice was issued to the appellant which was replied by him in which he again denied the allegations. He was reinstated into service and major punishment of reduction in pay by two stages for a period of two years was imposed upon him vide order dated 31.12.2020. Feeling aggrieved, he filed departmental appeal on 03.05.2021, on which respondent No. 2 issued show cause notice to the appellant which was duly replied by him but respondent No. 2 converted the penalty of reduction in pay by two stages for a period of two years into dismissal from service vide order dated 02.08.2021. Feeling aggrieved, the appellant filed revision petition on 12.08.2021, which was rejected on 02.06.2022; hence the instant service appeal.

4. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.



5. Learned counsel for the appellant, after presenting the case in detail, argued that inquiry conducted against the appellant was not according to the prescribed procedure, as neither statements were recorded in his presence nor he was given an opportunity of cross examination, which were pre-requisite under the law, before awarding major penalty. He argued that the appellant was punished due to his presence at the location of examination centre which meant that he was punished on the basis of presumption. He further argued that the punishment of reduction in pay by two stages for a period of 02 years was enhanced to dismissal from service by respondent No. 2 which was too harsh and was passed without observing codal formalities and was liable to be set aside. He requested that the appeal might be accepted as prayed for.

6. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that as per daily diary report No. 09 dated 01.11.2020 Police Station Charsadda City, a complaint/report was submitted to SHO City Charsadda by Assistant Director ETEA that both the appellants were caught by impersonating themselves as Muhammad Sohail Belt No. 419 and Abbas Akhtar Belt No. 1199 (real candidates) while conducting A-1 examination paper at Charsadda District. Initially enquiry against the appellant was conducted through the then DSP Hqrs: Nowshera. In the findings it was mentioned that the appellant had admitted his presence at examination hall, hence he was recommended for major punishment. On the said enquiry report, the competent authority directed the Inquiry Officer to collect evidence by recording statements of all the concerned officers/officials, hence enquiry was again conducted by the then DSP Hqrs by recording the statements and the appellant was found guilty of the offence. Final show cause



notice was issued to the appellant which was duly replied by him. Learned DDA further argued that the appellate authority, by considering that the punishment awarded to the appellant did not commensurate with the gravity of his misconduct, issued show cause notice to him and also called him in Orderly Room but he failed to advance any cogent reason in his defence and the punishment had rightly been converted into dismissal from service. He requested that the appeal might be dismissed.


7. Arguments and record presented before us shows that both the appellants were charged on the ground of impersonation and awarded major penalty of dismissal from service. After the incident of impersonation was reported, a procedure under the rules was adopted by the competent authority by issuing charge sheet and statement of allegations. An inquiry was conducted, based on which first, major punishment of reduction to lower scale and then dismissal from service was awarded. Perusal of the inquiry report shows that the inquiry officer did not record any statement of the complainant of the report, Bilal Ahmad, an Assistant Director in ETEA. Perusal of the report further shows statements of two witnesses, namely Massad Shah (No. 439) and Tajbar Khan (No. 887), which appear to be identical in every respect, be it the content or the printing, which raises doubt that the statements were recorded just to fulfill a formality. It further appears that no opportunity of cross-examination was provided to the appellants which is an obligation to fulfill the requirements of a fair trial.

8. In view of the above discussion, both the appellants are reinstated into service for the purpose of denovo inquiry. The respondents are directed to conduct denovo inquiry strictly under the rules by providing fair opportunity of



defence and cross examination to the appellants. The issue of back benefits is subject to the outcome of denovo inquiry. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 20th day of March, 2024.*


(FARZEETA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

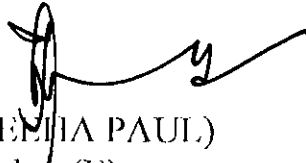
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20th Mar. 2024 01. Mr. Taimur Ali Khan, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, in connected service appeal No. 1092/2022, titled "Zar Khan Versus the Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others", appellant is reinstated into service for the purpose of denovo inquiry. The respondents are directed to conduct denovo inquiry strictly under the rules by providing fair opportunity of defence and cross examination to the appellant. The issue of back benefits is subject to the outcome of denovo inquiry. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 20th day of March, 2024.*


(FAREEHA PAUL.)
Member (I)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS