

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 100/2023

BEFORE: MR. KALIM ARSHAD KHAN CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Mr. Sajjad Khan, Constable No.6065, Police Line Bajaur.

..... (Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Malakand Division.
3. District Police Officer, Bajaur.

..... Respondents)

Mr. Noor Muhammad Khattak
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....10.01.2023

Date of Hearing.....01.04.2024

Date of Decision.....01.04.2024

JUDGEMENT

RASHIDA BANO, MEMBER (J):The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:

“That on acceptance of this appeal, the impugned orders dated 25.04.2022 and 19.09.2022 may very kindly be set aside and the appellant may please be reinstated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant. .”

2. Brief facts of the instant case are that appellant was serving the respondent

department as Constable and was performing his duty up to the entire satisfaction of his superiors. During service he was charged in FIR No.13 dated 23.02.2022 and FIR No.15 dated 25.02.2022. Before the decision of the Court in the said FIRs, he was removed from service vide order dated 25.04.2022. Feeling aggrieved, he preferred departmental appeal which was rejected. Thereafter he filed revision petition, which was not responded, hence, the instant service appeal.

3. 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 District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the impugned order was against law, facts and norms of natural justice; that the appellant had not been treated in accordance with law and rules; that no charge sheet and statement of allegations had been issued to the appellant prior to the issuance of impugned order; that no chance of defense had been granted to the appellant, and no regular inquiry had been conducted in the matter. Therefore, he requested for acceptance of the instant service appeal.

5. Conversely, learned District Attorney argued that the impugned order was based on facts and norms of justice; that the appellant had been treated in accordance with law and rules; that charge sheet and statement of allegations had duly been served upon the appellant; that appellant had been served with show cause notice on 05.11.2021 which had not been replied by him; that the appellant had been given full opportunity of defense and proper inquiry had been conducted. Therefore, he requested for acceptance of the instant service appeal.

6. Perusal of record reveals that appellant was appointed as Constable in the respondent department. During the service the appellant was charged in

FIR No.13 dated 23.02.2022 and FIR No.15 dated 25.02.2022 and in both the FIRs, appellant was granted bail by the competent court of law but respondent department without waiting for decision of the trial court and without conducting regular inquiry, issued impugned order dated 25.04.2022, whereby major penalty of removal from service was imposed upon the appellant. The appellant was acquitted in FIR No.13 and got regular bail in FIR No.15, whereafter he visited the concerned quarter for joining of duty but in response the appellant was handed over the impugned order dated 25.04.2022. The appellant feeling aggrieved preferred departmental appeal before the respondent No.2 but the same was rejected by the respondent No.2.

7. Appellant was proceeded against by the respondent by issuing charge sheet bearing No.601 dated 23.02.2022 and statement of allegation on the allegation of;

- a. Willful breach of orders bound to obey.
- b. Violation of duty
- c. Insubordinate to superiors officers

Mr. Gulzar Khan, SDPO Khar was appointed as inquiry officer vide order dated 23.02.2022, who examined appellant with reference to charge sheet and submit his report on 29.03.2022, wherein he instead of giving finding upon above mentioned charges, concluded that appellant was involved in serious crimes like theft vide two FIR bearing No.13 dated 23.02.2022 under sections 380-34 PPC of Police Station Khar and FIR No.15 dated 25.02.2022 under sections 381A-34 PPC of Police Station Khar, which affected the image of police in the eyes of people, therefore, recommended for penalty of reduction of increments for the period of 3 years. Authority had not agreed with enquiry officer recommendation and he order re-inquiry by appointing inspector

Mazoom Khan as inquiry officer.

Legally speaking when in the first inquiry report the factum of involvement of appellant in criminal cases came into the knowledge of the authority then the authority must have issued fresh charge sheet and statement of allegation with reference to involvement of appellant into criminal case but authority, instead of doing so only ordered re-inquiry. Re-inquiry officer also did not bother to record a single statement even of complainants of criminal cases or investigation officer and he just after perusal of earlier inquiry documents and on the basis of secret information formed his opinion and submitted his inquiry report on 19.04.2022 with recommendation of major punishment to appellant on the basis of which authority passed impugned order of removal from service on 25.04.2022.

8. When appellant was not charge sheeted due to his involvement in criminal cases then to award him punishment of this ground is not in accordance with law and he in this respect is condemned unheard as opportunity of defense was not provided to the appellant on charge of his involvement in criminal cases by conducting regular inquiry which is foremost requirement of law and rules. Appellant was awarded with major penalty of removal from service.

9. 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.

10. For what has been discussed above, we are unison to accept this appeal, set aside the impugned order and reinstate the appellant into service for proper inquiry with direction to respondent to issue proper charge sheet and provide fair opportunity of defense and cross examination to the appellant by conducting regular inquiry within 60 days after receipt of this order. Costs shall follow the event. Consign

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 1st day of April, 2024.*



(KALIM ARSHAD KHAN)
Chairman



(RASHIDA BANO)
Member (J)

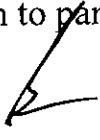
07.02.2024


1. Junior to learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Junior to learned counsel for the appellant requested for adjournment on the ground that senior counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 01.04.2024 before D.B. P.P given to parties.

SCANNED
DISTRICT
Peshawar

KaleemUllah


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)

ORDER

01.04.2024

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

2. Vide our detailed judgment of today placed on file, we are unison to accept this appeal, set aside the impugned order and reinstate the appellant into service for proper inquiry with direction to respondent to issue proper charge sheet and provide fair opportunity of defense and cross examination to the appellant by conducting regular inquiry within 60 days after receipt of this order. Costs shall follow the event. Consign

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 1st day of April, 2024.*


(KALIM ARSHAD KHAN)
Chairman


(RASHIDA BANO)
Member (J)

M.Khan

22.06.2023

Clerk of learned counsel for the appellant present.
Mr. Gul Shehzad, H.C alongwith Mr. Fazal Shah
Mohmand, Additional Advocate General for the
respondents present.

Para-wise comments on behalf of respondents
submitted, copy of which handed over to clerk of learned
counsel for the appellant. Adjourned. To come up for
arguments on 18.10.2023 before the D.B. Parcha Peshi
given to the parties.

SCANNED
KPST
Peshawar

Naeem Amin

(Salah-Ud-Din)
Member (J)

18th Oct, 2023

1. Learned counsel for the appellant present. Mr. Mohammad
Jan learned District Attorney for the respondents present.
2. Learned counsel for the appellant requested for adjournment
in order to prepare the brief. Adjourned. To come up for
arguments on 07.02.2024 before D.B. P.P given to the parties.

(Fareeha Paul)
Member (E)

(Rashida Bano)
Member (J)

*Kaleem Ullah

SCANNED
KPST
Peshawar