

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 14053/2020

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Abdul Qayum, ASI No. 766 Police Line, Charsadda. R/O Manikhel
District Charsadda. (Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Mardan
3. District Police Officer, Mardan Charsadda. (Respondents)

Mr. Muhammad Maaz Madani
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....03.11.2020
Date of Hearing.....02.11.2023
Date of Decision.....02.11.2023

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 instant appeal, the impugned order dated 22.04.2020 and appellate order dated 01.10.2020 may very kindly be set aside and the respondents may be directed to restore the pay of appellant to his original position will all back & consequential benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, that the



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appellant joined police department vide order dated 12.07.1994 and performed his duty with the entire satisfaction of his superiors. During routine patrolling appellant stopped a Quinqchi at Tajudin Machine, appellant while posted as Incharge P.P Jindi, arrested one Asif (Driver) and recovered dynamites from his possession but let him free without lodging FIR. Departmental proceeding was initiated against the appellant under Khyber Pakhtunkhwa Police Rules, 1975 and major penalty of reduction in rank was imposed upon the appellant vide order dated 12.02.2020. Feeling aggrieved, he filed departmental appeal which was partially accepted by converting the punishment from reduction in rank into reduction in pay scale by two stages with cumulative effect vide order dated 22.04.2020. Then appellant filed mercy petition which was regretted for no good ground, 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant has not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that impugned order passed by the respondents is against the law, facts and norms of natural justice hence not tenable and liable to be set aside. He contended that no regular inquiry was conducted by providing opportunity of self-defence and cross-examination and the appellant was condemned unheard.

5. Conversely, learned Deputy District Attorney for the respondents contended that appellant has been treated in accordance with law and rules. He further contended that appellant while posted as Incharge P.P Jindi, arrested one Asif (Driver) and recovered 1000 dynamites from his possession but let him free




without lodging FIR and also returned 500 dynamites by receiving Rs. 200,000/- as bribe/illegal gratification. Departmental proceeding was initiated against the appellant under Khyber Pakhtunkhwa Police Rules, 1975, as the appellant had committed gross misconduct. He was issued charge sheet alongwith statement of allegation and proper departmental enquiry was conducted and after fulfillment of all codal formalities he was awarded major penalty vide order dated 22.04.2020.

6. Perusal of record reveals that appellant was performing his duties as incharge police post Jindi Tehsil Tangi Charsadda being ASI. When on 31.12.2019 during patrolling had stopped a Quinqchi at Tajuddin Machine and on search three shopping bags full of explosive substances (Khatten) were recovered from the possession of Driver Asif S/O Nasrali who discussed that recovered explosive substance is ownership of one Mr. Sartaj S/O Mumtaz by showing license. Appellant taken Asif (Driver) to Police Post Jindi alongwith recovered contraband. This matter was brought into the notice of SHO Police Station Tangi properly who instructed the appellant to let the driver free after satisfaction and on the personal bond of Nazim, Shah Saud through Machalka. On next morning, Mr. Sartaj along driver and Nazim come to the police post and produced original license bearing No 26/Explosive form E2-40. Appellant brought into the knowledge of SHO who intimated that if found correct then let him free. Upon checking license alongwith NOC found correct. Therefore, recovered Khatten was handed over to Sartaj after fulfilling all the codal formalities and matter was closed. Disciplinary proceeding was initiated against the appellant by respondent No.3 on 08.01.2020 who issued charge sheet and statement of allegation with the allegation that he arrested one Asif S/O Qaroon Dheri Tangi Qinchu driver and recovered 1000 Dynamites from his possession but let him free without lodging proper FIR and also return 500 Dynamites to him by receiving Rs 200,000/- as bribe gratification and this act of appellant is highly objectionable and also earns



bad name to the police force, which amounts to grave misconduct at the part of appellant. Mr. Shaheenshah Gohar DSP/HQR Charsadda was appointed as Enquiry Officer. Appellant properly replied charge sheet and specially denied allegation of bribe/gratification by mentioning all the facts mentioned above. Enquiry Officer after conclusion of inquiry submitted his report on 30.01.2020. Although inquiry officer recorded statements but it was in question/answer form which is not permissible under the rules and most important thing is that the appellant was not provided with chance of self defence specially cross examination upon the Roman complainant, Asif driver, Shah Saood, Nazim and Sartaj license holder and police constable, which is pre requisite of a fair trial. It is also pertinent to mention here that appellant specifically mention in his reply that he brought entire episode into the notice of SHO police station Tangi which directed him to let free Asif (Driver) if documents are genuine, but statement of SHO was also not recorded, which is important piece of evidence.

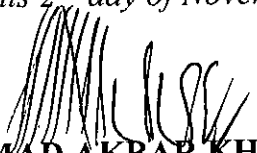
7. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles 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 absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of *audi alteram partem* was always deemed to be imbedded 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 set aside impugned orders and reinstate the appellant into service for the purpose of denovo inquiry by providing opportunity of self-defense, personal hearing and cross-examination to the appellant which is requirement of fair trial. Respondents are directed to conduct denovo inquiry within 90 days after receipt of copy of this judgment.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 2nd day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

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