

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1056/2023

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

Arshad Khan Ex-PASI, I/C Traffic, District Bannu.

..... (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Bannu region Bannu.
3. The District Police Officer, Bannu.

..... (Respondents)

Syed Noman Ali Bukhari
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....08.05.2023
Date of Hearing.....04.04.2024
Date of Decision.....04.04.2024

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:

“That on the acceptance of this appeal, the order dated 14.02.2023 and 12.04.2023 may kindly be set-aside and the appellant may be reinstated in to service with all back and consequential benefits. Any other remedy which this august tribunal deems fit and appropriate that may also be awarded in favor of appellant.”



2. Brief facts of the instant case are that appellant was serving as Probation Assistant Sub Inspector in the Police Department; that while serving, he was issued charge sheet dated 22.11.2022 regarding contacts with notorious persons and leakage of secret information; that the said charge sheet was replied by the appellant, denying the charges; that an inquiry was initiated against the appellant which resulted into the punishment of dismissal from service, vide impugned order dated 14.02.2023; that feeling aggrieved, he filed departmental appeal, which was rejected, hence, the instant service appeal.

3. Respondents were put on notice who submitted written reply/comments. We have heard learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant argued that the impugned order was against law, facts and norms of natural justice; that copies inquiry report and show cause notice were not provided to the appellant which shows that proper inquiry had not been conducted; that the inquiry proceedings show that the department had already decided to dismiss the appellant, and he had not been treated fairly; that the appellant had not been heard which was the violation of Article-10A of the Constitution of Pakistan, 1973; that the appellant was deprived of his right of defence by not giving chance of personal hearing and opportunity to cross-examine the witnesses; that the impugned order was also against the Articles 2-A, 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973; that the report of CDR (Call Data Record) was just for showing date and the time of dialed, missed and received calls which was made as based for the dismissal of the appellant and the said act



was against the law; that the appellant's family had given several sacrifices for the Police Department and could not think about contacts with notorious elements. Therefore, he requested for acceptance of the instant service appeal.

5. As against that, District Attorney argued that the impugned order was according to law, facts and norms of principle of justice; that the inquiry report, charge sheet and statement of allegation had been served upon the appellant; that the appellant was failed to rebut the allegations and the impugned order was quite legal and had been issued according to law; that the appellant had been given opportunity of defense but failed to prove his innocence; that the appellant had contacted the notorious care lifter as was evident from the CDR that the appellant had contacts with the said person; that the impugned order was in accordance with law rules and policy and the appellant had been granted full opportunity of defense in shape of cross-examination, charge sheet and statement of allegations. Therefore, learned District Attorney requested for acceptance of the instant service appeal.

6. Perusal of record reveals that appellant has joined the police department as constable in the year 2006 and was absorbed as PASI in the year 2016 against the Shuhada Quota. The appellant has passed Basic Elite Course, Traffic course, 08 promotional courses and earned 17 CC-III and 02 CC-II in recognition of his good performance. Appellant was served with charge sheet vide DPO Office Endst; No.445/SRC, dated 22.11.2022, wherein, charges of contacts with notorious person (Sakhat) coupled with leaking out information to him about the movement of arresting party to avoid his arrest as well as conveying pictures of police officials were leveled. The appellant properly replied to charge sheet and rebutted the allegations. Inquiry officer based his findings only on collection of CDR of



(Sakhat), and ignored the statement of SHO town which means that the inquiry officer a predetermined mind to remove the appellant. The competent authority (DPO Bannu) awarded the impugned punishment vide order dated 14.02.2023 on the basis of findings, without issuing final show cause notice and had also not provided inquiry report to the appellant.

7. Perusal of inquiry report reveals that entire emphasis of the inquiry officer is upon the CDR data, and he held the appellant liable for misconduct as appellant had allegedly contacted notorious international car lifter Sakhim ullah Alias Sakhat and send video of ASI Khalid, who was deputed for arrest of Sakhat.

8. Respondent, were asked to produced that CDR data & picture of video call, but they could not produce any such record rather they proclaimed show cause notice No.30 dated 26.02.2024 issued to Senior Clerk Muhammad Younas, ASI Ijaz Khan, Reader SP City and ASI Noor DALI Incharge Foji Missal Branch, on the allegation of missing of CDR data of the Sakhat from Foji Missal. Moreover, the interesting factor is that Muhammad Younas Khan in his reply to show cause dated 03.04.2024 had specifically mentioned that inquiry officer had not annexed CDR data along with inquiry file. The relevant portion of reply is as under;

عائد شدہ الزام کے بارے میں CDR اور ویڈیو کال کے متعلق ثبوت انکوائری فائل میں رہے ہیں اور نہ ہی معروض خدمت ہوں۔ کہ شامل کیے ہیں۔ انکوائری رپورٹ ہمراہ لف ہے۔ الزام بے بنیاد ہے نہ ہی انکوائری فائل انڈکس پر موجود ہے اور نہ کہ سائل کو کسی نے حوالہ کیا ہے۔ اور نہ کہ انکوائری آفیسر نے شامل تفتیش کیا ہے۔

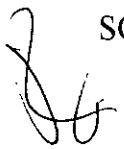
This reply of the Mr. Muhammad Younas was agreed by the District Police Officer which means that there was no such data is available on inquiry file. When same was not available in inquiry file and was not confronted to the appellant by the inquiry officer providing a chance of its rebuttal, then in such a situation to

held equality, appellant on this score is un-justice, because no chance of defense was provided to appellant which is essential requirement of fair trial.

9. It is also pertinent to mention here that appellant was not provided with inquiry report and inquiry record. Beside no final show cause notice was issued to the appellant by authority which is also suggestive of the fact that no CDR data was available with inquiry officer, which can be given and confronted to the appellant by the authority. So, appellant was penalized on the basis of record which was not in existence and he was condemned unheard.

10. 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 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.



11. Appellant admitted contact with Sakhat for the purpose of his arrest and even the death of Sakhat, was result of information which I had given to SHO which fact was confirmed by the Raza Khan SHO township in his statement recorded before the inquiry officer but said fact was ignored by inquiry officer.

12. For what has been discussed above, we are unison to accept appeal in hand. Costs shall follow the event. Consign.

13. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of April, 2024.*


(Kalim Arshad Khan)
Chairman

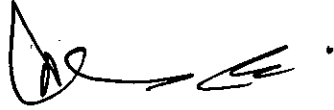

(Rashida Bano)
Member (J)

*M.Khan

ORDER

04.04.2024

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 appeal in hand. 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 4th day of April, 2024.*



(Kalim Arshad Khan)
Chairman



(Rashida Bano)
Member (J)

*M.Khan