

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

**Service Appeal No. 1554/2023**

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

Yasir Ali, Ex-Constable No. 236, posted at Barrier Hayat Qalandar Hangu.  
.....(Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Kohat Region, Kohat.
3. The District Police Officer, Hangu. ....(Respondents)

Mr. Taimur Ali Khan,  
Advocate

... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney

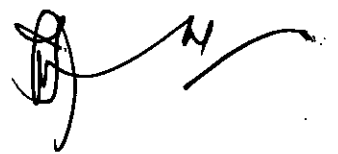
... For respondents

Date of Institution.....	12.07.2023
Date of Hearing.....	19.04.2024
Date of Decision.....	19.04.2024


**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 24.01.2023, whereby the appellant was dismissed from service and against the order dated 29.05.2023, received by the appellant on 16.06.2023, whereby his departmental appeal was rejected. It has been prayed that on acceptance of the appeal, the impugned orders dated 24.01.2023 and 29.05.2023 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.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the Police Department as Constable in the year 2009. He




was posted at Barrier Hayat Qalandar Hangu and as the Department had not provided any place to keep his lodges, he hired a house at Muslim Abad, alongwith another constable, for keeping their lodges alongwith the weapons in the box allotted by the department. A person, namely Bismillah S/O Rizwan Ullah, often came to the house as he was in relation with the persons residing in the house. On 19.10.2022, the appellant, after performing his duty, kept the SMG Riffle in the box meant for it in the house and locked it. In the morning, when he came to the house, he saw that lock of his box was broken and his SMG Riffle was missing. He straightaway went to the Police Station City Hangu and brought the matter into the notice of SHO, who told him that the police, during search and strike operation, recovered SMG No. HA 1328 with 03 spare charges having 90 rounds of 7.62 bore from the possession of the said Bismillah. The appellant was kept in quarter guard and an FIR No. 1115 dated 20.10.2022 u/s 15-AA was lodged against Bismillah, however, the recovered weapon was not mentioned in the FIR. Charge sheet was issued to the appellant, in reply to which he denied the allegations and gave the real facts about the issue. An inquiry was conducted against him in which no proper opportunity was provided to him as neither statements were recorded in his presence nor any opportunity of cross examination was given to him and he was held guilty of the charges leveled against him. Show cause notice was issued to him which was duly replied and again he denied the allegations. He was dismissed from service vide order dated 24.01.2023. Feeling aggrieved, he filed departmental appeal which was rejected on 29.05.2023 which was received by the appellant from the office of respondent No. 3, through an application dated 16.06.2023; 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 Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned orders were against the law, facts, norms of justice and material on record, therefore not tenable in the eyes of law and liable to be set aside. He argued that no proper and regular inquiry was conducted against the appellant as no proper opportunity of defence was provided to him. Neither statements were recorded in his presence nor any opportunity of cross-examination was provided to him. Even the inquiry report was not provided to him, which was violation of law and rules. Learned counsel argued that on missing of SMG riffle from the box of the appellant, he timely informed the concerned SIO which was recovered from one Bismillah during search and strike operation. As per statement of Bismillah during investigation, the said riffle was handed over to him by the appellant upon which the whole action was taken against the appellant without conducting regular inquiry to dig out the reality and he was punished on the basis of presumptions. He requested that the appeal might be accepted.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant handed over his official riffle to a private person which was recovered from the accused, Bismillah. On account of such misconduct, the appellant was proceeded against departmentally. He was served with charge sheet and during the



enquiry, charges leveled against him stood proved. After fulfillment of all codal formalities, he was dismissed from service through a speaking order. He requested that the appeal might be dismissed.

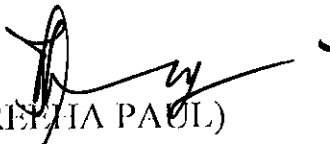
6. Arguments and record presented before us transpire that the appellant, who was posted at Hangu, found his official weapon, which was a SMG rifle, which was kept in a locked box, missing from there. He immediately went to the SHO of P.S Hangu City for its report where he found that his SMG was recovered from one Bismillah, who used to visit the other constable residing with the appellant in the same house. As far as Bismillah was concerned, the FIR dated 20.10.2022 was lodged against him, whereas departmental proceedings were initiated against the appellant. An inquiry was conducted, the report of which has been annexed by the respondents with their reply. One of the charges against the appellant was that as per statement of the accused Bismillah in the FIR dated 20.10.2022, the appellant handed over the SMG to him. Perusal of the Inquiry Report shows that the inquiry officer did not bother to probe into that allegation properly. No statement of Bismillah was recorded by him, neither any opportunity of cross examination was provided to the appellant. Another allegation that the appellant was using drugs has been proved by the inquiry officer based on some secret information. Here again, that secret information had to be revealed to the appellant during his inquiry proceedings and opportunity of cross examination had to be provided to him. It was noted that the Inquiry Officer did not fulfill the requirements of a fair trial. The competent authority, without taking into account the fact whether a fair opportunity had been provided to the appellant to defend his case during inquiry, passed the order whereby major penalty of dismissal from service had



been imposed upon him. The punishment appears harsh in such a scenario. However, it is felt that the appellant showed carelessness when he remained away from his room and the box in which he placed his official rifle, despite being locked, remained unattended.

7. In view of the above discussion, we set aside the orders impugned before us and the appellant is reinstated into service with all back benefits. However minor penalty of withholding of two annual increments for two years, without cumulative effect, be imposed upon him on his careless attitude towards the official rifle alongwith ammunition provided to him. The period he remained away from service, as a result of order dated 24.01.2023, be treated as leave of the kind due. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 19<sup>th</sup> day of April, 2024.*

  
(FARIHA PAUL)  
Member (E)


  
(RASHIDA BANO)  
Member(J)

SA 1554/2023

19<sup>th</sup> Apr. 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 ~~26~~<sup>05</sup> pages, we set aside the orders impugned before us and the appellant is reinstated into service with all back benefits. However minor penalty of withholding of two annual increments for two years, without cumulative effect, be imposed upon him on his careless attitude towards the official rifle alongwith ammunition provided to him. The period he remained away from service, as a result of order dated 24.01.2023, be treated as leave of the kind due. 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 19<sup>th</sup> day of April, 2024.*

  
(FARZEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member(J)

\*Fazal Subhan PS\*