

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**MUHAMMAD AKBAR KHAN** ... **MEMBER (Executive)**

*Service Appeal No.2040/2023*

Date of presentation of Appeal.....11.10.2023  
Date of Hearing.....10.05.2024  
Date of Decision.....10.05.2024

**Abdul Wahab** S/O Wakeel Akbar, Ex-Constable R/O Cast Mula Khel, Tapa Qutab Khel, Mazari Ghari, P/o Ghaljo Tehsil Upper District Orakzai .....(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Home & Tribal Affairs, Civil Secretariat Peshawar.
2. **The Inspector General of Police**, Khyber Pakhtunkhwa, Peshawar.
3. **The Regional Police Officer**, Kohat Region, Kohat.
4. **The District Police Officer**, District Orakzai, Orakzai Headquarter, Hangu.....(**Respondents**)

Present:

Mr. Muhammad Ilyas Orakzai, Advocate .....For the appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney....For respondents

.....  
**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER NO.278/EC/OASI DATED 28.12.2020 OF RESPONDENT NO.4 AS WELL AS AGAINST THE APPELLATE ORDER NO.9915-16/EC KOHAT DATED 14.09.2023 OF RESPONDENT NO.3, WHEREBY THE APPEAL OF THE APPELLANT WAS DISMISSED AND UPHELD THE ORDER OF RESPONDENT NO.4.**

-----  
**JUDGMENT**

**KALIM ARSHAD KHAN, CHAIRMAN:** Brief facts of the case are that appellant was initially appointed in the Levy Force of District Orakzai as Sepoy in the year 2005; that after 25<sup>th</sup> Constitutional Amendment, Khasadar Force was absorbed in the Khyber

Pakhtunkhwa Police Force, accordingly, the appellant's services were also absorbed in the Khyber Pakhtunkhwa Police; that while serving in the Police Department, FIR No.888 dated 12.06.2019 was registered under Section 302/324/337-D/452/34 PPC, Police Station, MRS, District Kohat; that the appellant allegedly surrendered himself before the law, whereby, he was convicted in the said FIR by the trial court, which conviction was challenged before the Peshawar High Court, Peshawar, and the Peshawar High Court vide judgment dated 07.06.2023, acquitted the appellant; that after acquittal, he was released from jail on 22.06.2023 and approached the office for assumption of duty but there he received the impugned dismissal order dated 28.12.2020.

2. Feeling aggrieved, he filed departmental appeal on 24.07.2023, which was rejected on 14.09.2023. Therefore, the appellant filed the instant service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellant and learned Deputy District Attorney for respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the

learned Deputy District Attorney controverted the same by supporting the impugned order(s).

6. Perusal of record shows that appellant was serving in the Police Department when an FIR No.888 dated 12.06.2019 was registered against him under Sections 302/324/337-D/452/34 PPC, Police Station, MRS, District Kohat. Accordingly, he was tried and the Trial Court (The Additional Sessions Judge-III Kohat) convicted him in the said FIR vide order dated 21.12.2020. The conviction order of the Trial Court was challenged by the appellant before the Peshawar High Court, Peshawar and the Peshawar High Court, Peshawar vide order dated 07.06.2023, acquitted the appellant. However, the District Police Officer, Orakzai vide impugned order 28.12.2023 had dismissed the appellant from service.

7. The impugned order dated 28.12.2023 shows that the appellant has been dismissed only on the basis of the FIR lodged against the appellant. The appellant has annexed the judgment of the Peshawar High Court, Peshawar regarding his acquittal. Record shows that no inquiry had been conducted in the matter. He had also not been not asked to prove his innocence regarding his alleged misconduct. Even admittedly no show cause notice was issued after the alleged inquiry. The record is silent in respect of proper inquiry, show cause notice, which shows that no proper inquiry was conducted and all the proceedings were done against the rules. Appellant was not afforded an opportunity of cross examination or even personal hearing as is required under rules rendering the entire

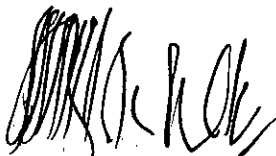
departmental action fruitless and constraining the Tribunal to remit the matter back to the Competent Authority to conduct proper inquiry.

8. Keeping in view the entire record, we are left with no option but to accept this appeal and by setting aside the impugned orders and reinstating the appellant for the purpose of proper inquiry to be conducted within 90 days of the receipt of this judgment. Needless to mention that the appellant shall be duly associated with the inquiry proceedings, providing him opportunity of cross examination and then proceeding and concluding the same in accordance with law and rules. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10<sup>th</sup> day of May, 2024.*



**KALIM ARSHAD KHAN**  
Chairman



**MUHAMMAD AKBAR KHAN**  
Member (Executive)

10.01.2024 1. Junior to counsel for the appellant present. Mr. Habib Anwar, Additional Advocate General for the respondents present.

2. Reply/comments on behalf of respondents submitted through office on 05.01.2024 which is placed on file. Copy of the same handed over to junior of learned counsel for the appellant. To come up for arguments on 10.05.2024 before D.B. P.P given to the parties.

SCANNED  
KPST  
Peshawar.

S.A #.2040/2023

ORDER

10<sup>th</sup> May. 2024

(Muhammad Akbar Khan)  
Member (E)

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are left with no option but to accept this appeal and by setting aside the impugned orders and reinstating the appellant for the purpose of proper inquiry to be conducted within 90 days of the receipt of the judgment. Needless to mention that the appellant shall be duly associated with the inquiry proceedings, providing him opportunity of cross examination and then proceeding and concluding the same in accordance with law and rules. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10<sup>th</sup> day of May, 2024.*

(Muhammad Akbar Khan)  
Member (E)

(Kalim Arshad Khan)  
Chairman