

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1737/2023

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

Zafran Ullah, Ex-Constable No. 4542, District Security Branch, Peshawar.
.....(*Appellant*)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Capital City Police Officer, Peshawar.
3. The Senior Superintendent of Police (Operation), Peshawar.
.....(*Respondents*)

Mr. Taimur Ali Khan,
Advocate

... For appellant

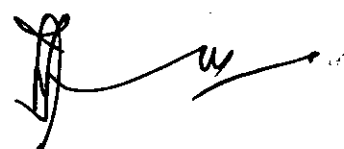
Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

Date of Institution..... 25.08.2023
Date of Hearing..... 25.04.2024
Date of Decision..... 25.04.2024

JUDGEMENT

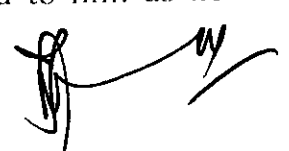
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 07.12.2021, whereby major punishment of removal from service was imposed upon the appellant, against the order dated 25.03.2022, whereby the departmental appeal of the appellant was rejected and against the order dated 09.02.2023 received by him on 17.08.2023, whereby his revision petition was also rejected. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant might 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 was appointed as Constable in the respondent department. During his service, charge sheet alongwith statement of allegations was issued to him which was properly replied by him in which he denied the allegations leveled against him and gave the real facts about the issue. Inquiry was conducted in which no proper opportunity of defence was provided to him as neither statements of witnesses were recorded in his presence nor he was given any opportunity of cross-examination, after which the Inquiry Officer recommended him for major punishment. Show cause notice was issued to him which was replied in which he again denied the allegations. He was removed from service vide impugned order dated 07.12.2021. Feeling aggrieved, the appellant filed departmental appeal which was rejected on 25.03.2022. He filed revision petition on 28.03.2022, which was also rejected on 09.02.2023, which was never communicated to him and he received the same through application submitted by him on 17.08.2023; 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 learned 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 further argued that no proper and regular inquiry was conducted in the matter and no opportunity of defence was provided to him as neither



statements were recorded in his presence nor opportunity of cross examination was afforded to him which was mandatory under the law. The Inquiry Officer mainly relied on the statement of S.I Zulfiqar ASHO Jamrud and S.I Zia Ullah Khan, I.O without conducting proper and regular inquiry to dig out the real fact about the allegations and gave his findings on presumption which was not permissible under the law. He argued that the appellant was arrayed in the case vide FIR No. 319 dated 09.09.2021 u/s 9D, 13 KPK Act 15AA, 109, 419, 468, 471, 420 P.S Jamrud on the basis of statement of accused namely Najeeb Ullah u/s 163, however, the appellant was discharged by the competent court of law on 04.01.2021 on the basis that beside the statement of co-accused, no evidence was available against the appellant. He argued that no corroborative evidence was presented against the appellant but the respondent department took action against him 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 performance of the appellant during service was not up to the mark and he committed gross misconduct by giving secret information to criminals and brought a bad name for the entire police force. He argued that the appellant, while posted to District Security Branch, Peshawar, was proceeded against departmentally on the charges of his involvement in the objectionable activities, having nexus with organized criminals and drug paddlers, with the intention of personal gain. He was issued charge sheet alongwith statement of allegations which was replied by him but the same was found unsatisfactory. The Superintendent of Police Cantt.



Peshawar was appointed as Enquiry Officer. During the course of enquiry, the appellant was provided full opportunity of personal hearing, his statement was also recorded and he was given an opportunity of verbal cross examination, but he failed to rebut the charges leveled against him. The Enquiry Officer established his links with narcotics dealers and sharing sensitive information with them. The appellant was found guilty of the charges beyond any shadow of doubt and after fulfilling all the codal formalities, he was awarded the major punishment. He requested that the appeal might be dismissed.

6. The appellant was proceeded against departmentally on the charges of having links with criminals and drug peddlers. The allegations read as follows:-

"It has been learnt from reliable sources hat he while posted in District Security Branch, Peshawar was hand in gloves with organized criminals and drug paddlers. Similarly he was reportedly patronizing his illegal activities with the intention for personal gain. Being a member of the disciplined force, his above act comes within the ambit of corruption and is highly objectionable and render himself liable for disciplinary proceedings under Police (Efficiency & Disciplinary) Rules, 1975."

7. While going through the inquiry report, it was noted that the inquiry officer based his findings on statements of two police personnels; one of them was S.I Zulfiqar who was ASHO, P.S Jamrud where the FIR was registered and the other was S.I Ziaullah Khan who was the Investigation Officer of the case. He also took into account some audio recordings provided by the ASHO Zulfiqar P.S Jamrud. Two points were worth to note in the allegation against

the appellant, one, "reliable sources" and second, "he was reportedly patronizing his illegal activities.....". Both these allegations are vague; neither reliable sources nor illegal activities have been defined and clearly mentioned. The inquiry report is also silent whether the reliable sources, reports regarding patronizing his illegal activities and audio recording were placed before the appellant and he was given an opportunity of cross examination. This shows that the requirements of fair trial were not fulfilled. The entire procedure looks like a one sided affair and is not tenable in the eyes of law.

8. In view of the above discussion, the appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 25th day of April, 2024.*


(FANEEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

SA 1737/2023

25th 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 05 pages, the appeal in hand is allowed as prayed for. 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 25th day of April, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS