

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.1670/2023

Date of presentation of Appeal.....17.08.2023
Date of Hearing.....14.05.2024
Date of Decision.....14.05.2024

Tariq Aziz S/O Zubair Khan Ex-Constable No.4886 R/o Subhan Shah Baba, Lund Khowar Tehsili Takht Bahai District Mardan
.....(*Appellant*)

Versus

1. **Commandant Elite Force** Khyber Pakhtunkhwa, Peshawar.
2. **Deputy Commandant Elite Force**, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:

Mr. Kabir Ullah Khattak, AdvocateFor the appellant
Mr. Muhammad Jan, District Attorney.....For respondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 THE IMPUGNED ORDER DATED 03.05.2023 WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE WAS IMPOSED TO THE APPELLANT AGAINST WHICH THE APPELLANT FILED DEPARTMENTAL APPEAL ON 16.05.2023 WHICH HAS NOT BEEN DECIDED WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as enumerated in the memo and grounds of appeal are that appellant was appointed as Constable in the Police Department; that on the basis of allegations, he was dismissed from service on 03.05.2023; that feeling aggrieved, he filed departmental appeal on 16.05.2023,



which was not responded within statutory period of ninety days, hence, the instant service appeal.

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

6. The appellant was dismissed from service vide order dated 03.05.2023 on the allegations leveled by the competent authority.

The allegations are as follows:

"i. He alleged that nature of explosion in CTD Police Lines, Kabat District Swat was fabricated by officers/officials.

ii. He also stated that facts were tarnished and twisted as there is no electricity in Armoury/Kot.

iii. He stated about the treatment meted out to constabulary and alleged this disbursement of national consensus amount was not appropriate as given the government/department.

iv. He stated that rights of constabulary are forfeited by senior command without any material facts and putting same before your chain of command."

7. Before issuance of the impugned dismissal order, charge sheet/statement of allegations were issued to the appellant. The



appellant was proceeded against departmentally on the basis of the said allegations. However, codal formalities have not been fulfilled before issuance of the impugned order. Show cause notice was mandatory, but the same was not issued to the appellant and he was dismissed from service without giving him opportunity of defense.

8. We, therefore, consider it necessary to remit the matter to the respondents to issue show cause notice and provide him opportunity of hearing and then pass appropriate order. Costs shall follow the event. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 14th day of May, 2024.*



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executive)

Mutazem Shah




22.04.2024 1. Learned counsel for the appellant present. Mr. Arshad Azam learned Assistant Advocate General alongwith Niaz Muhammad, DSP for the respondents present.

- 2. Representative of respondent is directed to produce entire record of inquiry proceeding in respect of appellant on the next date positively. Adjourned. To come up for record and arguments on 14.05.2024 before D.B. P.P given to parties.

SCANNED
M.F.C.T.
PESHAWAR


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

Kaleemullah

S.A #.1670/2023

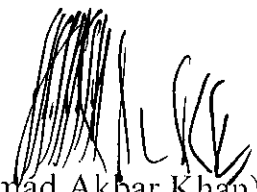
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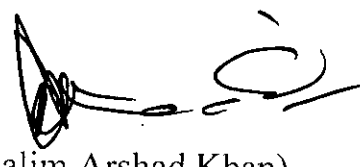
14th May. 2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Vide our consolidated judgment of today placed on file, we consider it necessary to remit the matter to the respondents to issue show cause notice and provide him opportunity of hearing and then pass appropriate order. 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 14th day of May,*

2024.


(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman

Mutazem Shah