

Service Appeal No. 1496/2022 titled "Zahid Ur Rehman Versus Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar and others" and connected Appeal No.1497/2022 titled "Muhammad Attique Khan Versus Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar and others" decided on 17.05.2024 by Division Bench comprising Kalim Arshad Khan, Chairman and Muhammad Akbar Khan, Member (Executive), Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

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

Service Appeal No. 1496/2022

Date of presentation of appeal30.09.2022
Dates of Hearing.....17.05.2024
Date of Decision.....17.05.2024

Zahid Ur Rehman, Ex-Constable No. 668693, R/o Mandori Tehsil Alizai District Kurram.(*Appellant*)

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar.
 2. Regional Police Officer, Kohat Region, Kohat.
 3. District Police Officer, District Kurram.
-(*Respondents*)

Present:

Mr. Muhammad Furqan Yousafzai,
Advocate.....For appellant.

Mr. Muhammad Jan,
District Attorney.....For respondents.

.....
APPEAL UNDER SECTION 4 OF KP SERVICES TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 02/08/2022 WHEREBY THE RESPONDENT NO. 2 DISMISSED THE DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE IMPUGNED ORDER DATED 08/04/2022 PASSED BY THE RESPONDENT NO. 3 WHEREIN THE APPELLANT WAS DISMISSED FROM HIS SERVICE.
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Service Appeal No. 1497/2022

Date of presentation of appeal30.09.2022
Dates of Hearing.....17.05.2024
Date of Decision.....17.05.2024

Muhammad Attique Khan, Ex-Constable No. 9108, R/o Mandori Tehsil Alizai District Kurram.(*Appellant*)

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar.
 2. Regional Police Officer, Kohat Region, Kohat.
 3. District Police Officer, District Kurram.
-(*Respondents*)

Present:

Mr. Muhammad Furqan Yousafzai,
Advocate.....For appellant.

Mr. Muhammad Jan,
District Attorney.....For respondents.

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APPEAL UNDER SECTION 4 OF KP SERVICES TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 26/07/2022 WHEREBY THE RESPONDENT NO. 2 DISMISSED THE DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE IMPUGNED ORDER DATED 08/04/2022 PASSED BY THE RESPONDENT NO. 3 WHEREIN THE APPELLANT WAS DISMISSED FROM HIS SERVICE.
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CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Through this single judgment, this appeal and the connected Service Appeal No. 1497/2022 titled "*Muhammad Attique Khan Versus Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar and others*" are decided as both are regarding the same subject matter and can conveniently be decided together.

2. According to the facts gathered from the available record, the appellants were serving as Constables in the Police Department. Disciplinary proceedings were initiated against the appellants on the allegations of absence from duty without prior permission of the competent Authority. On conclusion of the inquiry, the appellants were awarded major penalty of dismissal from service vide separate impugned orders dated 08.04.2022. Feeling aggrieved, the appellants preferred separate departmental appeals on 31.05.2022, which were dismissed vide orders dated 02.08.2022 and 26.07.2022 respectively. The appellants have now approached this Tribunal

through filing of the instant service appeals on 30.09.2022 for redressal of their grievances.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance through the representatives and contested the appeals by filing their respective para-wise replies raising therein numerous legal and factual objections.

4. Learned counsel for the appellants has argued that the appellants had never remained absent from duty rather they were performing their duty as Security Guards with MNA Munir Khan Orakzai and remained with him till his martyrdom in the year 2020 and then Dr. Abdul Qadeer Khan, who was the brother of the martyred MNA Munir Khan Orakzai. He next argued that the Dr. Abdul Qadeer Khan with whom the appellants were performing their duties as Security Guards, has also given an Affidavit regarding performing of duties by the appellants with him. He further argued that the appellants were awarded major punishment of dismissal from service on the allegation of absence from duty, however neither specification of dates of absence has been mentioned in the impugned orders nor the procedure as provided in Khyber Pakhtunkhwa Police Rules, 1975 was adopted. He next contended that no charge sheet as well as statement of allegations and show-cause notice were served upon the appellants and they were awarded major penalty without holding any regular inquiry in the matter. He further contended that whole of the proceedings were conducted at the back of the appellants without affording them any opportunity of personal hearing or self defense. He also contended that rights of the appellants as enshrined in Article 10-A of the constitution of Islamic Republic of Pakistan were badly violated, therefore, the impugned orders are against the law, facts, evidence on record, rules and

principles of justice, hence liable to be set-aside. In the last, he contended that the impugned orders might be set-aside and the appellants might be reinstated in service with all back benefits.

5. Conversely, learned District Attorney for the respondents has contended that the appellants were neither deputed as Security Guards with the then MNA Munir Khan Orakzai and his brother Dr. Abdul Qadeer Khan nor the appellants have annexed any order in this respect. He further contended that the appellants were willfully remained absent from duty without any permission of the competent authority, therefore, proper inquiry was conducted in the matter by complying all the legal and codal formalities. He further contended that charge sheet alongwith statement of allegations was issued to the appellants and they were time and again contacted for appearance before the inquiry officer but they deliberately did not appear before the inquiry officer. In the last, he contended that absence notice was also published in the newspaper but even then the appellants failed to join the duty, therefore, both the appeals might be dismissed with costs.

6. We have heard learned counsel for the appellants and learned District Attorney for the respondents and have perused the record.

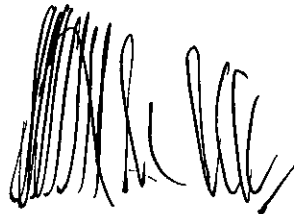
7. Stance of the appellants is that they were deputed as Security Guards with Dr. Abdul Qadeer Khan, who is brother of the then MNA Munir Khan Orakzai, whereas the department contends that they were never deputed with anybody else as Security Guards. Besides the ex-parte inquiry appear to have been conducted in a slipshod manner, wherein although it is alleged that the appellants were repeatedly summoned for appearance before the inquiry officer but they did not appear. We don't find any document of summoning

the appellants to face the inquiry. Inquiry also seems to be bereft of any details nor any statement of anybody appears to have been recorded by the inquiry officer rendering it of no avail and compelling the Tribunal to allow both the appeals, set-aside the impugned orders, remit the matter back to the department for conducting proper de-novo inquiry with the associating the appellants with the proceedings and providing also opportunity of defence as well as cross-examination. The exercise shall be completed within 60 days of receipt of copy of this judgment. The appellants are reinstated for the purpose of inquiry. The issue of back benefits is subject to the outcome of inquiry. Disposed of. Costs shall follow the event. Copy of this judgment be placed in the connected appeal file. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 17th day of May, 2024.*



KALIM ARSHAD KHAN
Chairman



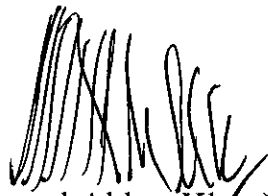
MUHAMMAD AKBAR KHAN
Member (Executive)

Naeem Amin

ORDER

17th May, 2024

1. Appellant alongwith his counsel present. Mr. Muhammad Usman, DSP (Legal) alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, we don't find any document of summoning the appellant to face the inquiry. Inquiry also seems to be bereft of any details nor any statement of anybody appears to have been recorded by the inquiry officer rendering it of no avail and compelling the Tribunal to allow the appeal, set-aside the impugned orders; remit the matter back to the department for conducting proper de-novo inquiry with the associating the appellant with the proceedings and providing also opportunity of defence as well as cross-examination. The exercise shall be completed within 60 days of receipt of copy of this judgment. The appellant is reinstated for the purpose of inquiry. The issue of back benefits is subject to the outcome of inquiry. Disposed of. 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 17th day of May, 2024.*



(Muhammad Akbar Khan)
Member (Executive)



(Kalim Arshad Khan)
Chairman