

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL**  
**PESHAWAR**

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

*Service Appeal No. 7503/2021*

Date of presentation of Appeal.....16.07.2021  
Date of Hearing.....02.05.2024  
Date of Decision.....02.05.2024

Bilal Hussain S/o Mohammad Israr, Sub-Inspector, Capital City Police,  
Peshawar.....(Appellant)

**VERSUS**

1. Senior Superintendent of Police, Operations, Peshawar.
  2. Capital City Police Officer, Peshawar.
  3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- .....(Respondents)

ARBAB SAIFUL KAMAL,  
Advocate

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For appellant.

MUHAMMAD JAN,  
District Attorney

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For respondents

**JUDGMENT**

**MUHAMMAD AKBAR KHAN, MEMBER (E):-** The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

*"That on acceptance of the appeal, order dated 23.06.2021 of R. No. 2 be set aside and the forfeiture of approved service for one year be restored with all consequential benefits."*

02. Brief facts of the case are that the appellant was appointed as PASI on the recommendation of Public Service Commission and on satisfactory

performance, he was promoted to the rank of Sub Inspector and posted as SHO Police Station, Badaber; that on 02.06.2020, Mr. Aziz Ullah Khan, ASI of Police Station Badaber registered FIR No. 513 U/s 15/17 AA against unknown persons regarding smuggling of arms ammunition and Motorcar No. 642/LEF was also taken into custody. The said vehicle was entrusted to accused Bilal Ahmad; that FIR No. 84, Police Station Hassan Khan Shaheed Aladand District Malakand was registered against Shakeel Ahmad S/o Wali Muhammad alongwith Bilal Ahmad S/o Nisar Ahmad R/o Utmanzai Pawaka, Peshawar U/s 9 (D) CNSA by Naib Subedar, Post Commander; that on 12.09.2020, FIR No. 924, registered by Sub Inspector Police Station Badaber against the appellant on the allegation that the said vehicle was under the control of appellant and was then taken into custody on 15.09.2020; that the appellant alongwith Jamil Shah IHC was closed to Central Police Office, Peshawar on 15.09.2020 but the said order was withdrawn on 17.09.2020 by respondent No. 3; that the appellant was served with the charge sheet and statement of allegation by respondent No. 1 on 17.09.2020 which was replied by the appellant and denied the allegation leveled against him; that the accused namely Bilal Ahmad who was serving as Constable in the office of Central Police Office, Khyber Pakhtunkhwa, Peshawar and is behind the bar in case FIR No. 84 dated 12.09.2020; that the appellant was released on bail from the charges leveled against him on 02.10.2020 and the DSP (Investigation) Saddar Circle investigated the matter and submitted report to the respondent No. 1 on 21.10.2020; that on 24.11.2020 application was submitted before the court of Illaqa Judicial Magistrate Peshawar by the prosecution to discharge the appellant from baseless charges. On 23.12.2020, inquiry officer submitted report to the authority for onward action and no

punishment was ever suggested for imposition upon the appellant but suitable one but respondent No. 1 issued order dated 28.12.2020 whereby the appellant was dismissed from service. Feeling aggrieved, the appellant filed departmental appeal on 30.12.2020 before respondent No. 2. In the meanwhile, the prosecution submitted application before the competent court of law to discharge the appellant as well as IHC Jamil Shah which was accepted on 05.01.2021. Respondent No. 2 partially accept the appeal and major penalty of dismissal from service was converted to forfeiture of approved service for one year vide impugned order dated 23.06.2021. Feeling aggrieved from the impugned order dated 23.06.2021, the appellant filed the instant service appeal on 16.07.2021.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that during service the appellant remained SHO in various Police Station but no adverse report, whatsoever, was made against him; that allegations No. 2 & 3 in the charge sheet/statement of allegations has no concern with the appellant and no record exist that appellant handed the said vehicle on Superdari or on personal surety bond; that in the final show cause notice 24.12.2020 reply of the appellant was required within seven days of its delivery, however, just after passage of four days, the appellant was dismissed from service on 28.12.202; that as per the judgments of the apex court when the charge is denied then the conduct of

regular inquiry becomes mandatory but in the case of the appellant, no regular inquiry was conducted by the respondents. No statement of any witnesses was recorded in presence of the appellant nor he was afforded opportunity of cross examination to rebut the allegations; that the inquiry officer never recommended appellant for imposition of major punishment; that the statement recorded u/s 161 CrPC, if any, has no legal value in the eyes of law as the same are not admissible in law under the evidence act; that the appellant was implicated in FIR No. 513 dated 02.06.2020, therefore, the department was required to have waited for the outcome of the criminal case but instead of that, the departmental proceedings were conducted in a very hurry and hasty manner which reflects malafide on part of the respondents. In the last, he requested for acceptance of the appeal by setting aside the impugned order dated 23.06.2021.

05. On the other hand, learned District Attorney contended that the appellant being SHO of Police Station transgressed his authority by giving the case property car to accused Constable Bilal Ahmed; that after completion of all the enquiry proceedings as per the Khyber Pakhtunkhwa Police Rules 1975 (amended 2014) he was issued final Show Cause Notice but he failed to submit his written reply in stipulated period. He further contended that the proper departmental inquiry under rules ibid was conducted against him by issuing him proper charge sheet and statement of allegations; that the appellant was associated with the enquiry proceedings and ample opportunity of self-defense was provided to him but he failed to defend himself against the charges hence condemned as per gravity of his guilt; that as per KP ESTA Code and rules the competent authority is not bound to follow the

punishment under rules ibid; that upon acceptance of his departmental appeal the major penalty was converted into minor penalty of forfeiture of one year approved service; that according to the judgment of apex court, court proceedings and departmental proceedings are two different entities which can run side by side and it is not mandatory to pend departmental proceedings for decision in criminal case.

06. Scrutiny of record reveals that during posting of the appellant as SHO Badabher Police Station Peshawar a Motorcar bearing No. LEF-6432 was taken into custody in a smuggling case of Arms & ammunition in the jurisdiction of Police Station Badabher. FIR to this effect was registered on 02.06.2020 against unknown persons. The said vehicle was entrusted to one constable Bilal Ahmed which was again taken into custody in the jurisdiction of Police Station Aladhand, District Malakand for smuggling of contraband. Constable Bilal Ahmed alongwith his accomplice namely Shakeel Ahmed was arrested red handed and FIR dated 12.09.2020 was registered against them. Taking notice of the fact that the car, which was case property in the case of FIR dated 02.06.20200 Police Station Badabher, was illegally under personal use of the arrested Constable Bilal Ahmed, departmental proceedings were initiated against the responsible officials of Police Station Badabher including the appellant being over all head/incharge of the Police Station. The appellant was also nominated in the criminal case. Both the departmental proceedings and the criminal case continued independently and reached different conclusions. In the criminal case the appellant was discharged from the case by the court of Judicial Magistrate Peshawar upon application from the prosecution whereas the departmental proceedings against the appellant

culminated into imposition of major penalty of dismissal from service. The appellant availed departmental remedy available to him as the appellate authority upon representation of the appellant converted the major penalty of dismissal from service into minor penalty of forfeiture of approved service for one year. The stance of the appellant that the departmental authorities were supposed to wait for conclusion of the criminal case against the appellant is not tenable given the fact that law does not put bar on parallel departmental and criminal proceedings which can reach different conclusion. We also do not find any flaw at any stage of departmental proceedings. The appellant has already availed departmental relief and we find no reason for further relief as the minor penalty imposed by the appellate authority is well commensurate with the guilt of the appellant that stands proved in the inquiry report.

07. Foregoing in view the instant appeal stands dismissed. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 2<sup>nd</sup> day of May, 2024.*



KALIM ARSHAD KHAN  
CHAIRMAN



(MUHAMMAD AKBAR KHAN)  
MEMBER (E)

ORDER

02.05.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our detailed judgment of today separately placed on file, the instant appeal stands dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 2<sup>nd</sup> day of May, 2024.*



KALIM ARSHAD KHAN  
CHAIRMAN



MUHAMMAD ARBAR KHAN  
MEMBER (E)