


24.01.2024


Learned counsel for the appellant present.
Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 22.05.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPS
Rastawar

Naeem Amin


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)

S.A No.269/2023


ORDER

22nd May, 2024

1. Learned counsel for the appellant and Mr. Muhammad Jan, District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, on allowing this appeal, we set aside the impugned order and reinstate the appellant in service from the date of his dismissal with all back benefits. However, the absence period of the appellant shall be treated as leave of the kind due. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Peshawar and given under my hand and the seal of the Tribunal on this 22nd day of May, 2024.*



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman

independent witness was recorded in support of the allegations against the appellant. It is strange enough to note that the inquiry officer had cross-examined the appellant instead of examining some independent witness and providing opportunity of cross examination to the appellant. The inquiry proceedings are thus not sustainable, nor is the consequent punishment maintainable.

7. Therefore, on allowing this appeal, we set aside the impugned order and reinstate the appellant in service from the date of his dismissal with all back benefits. However, the absence period of the appellant shall be treated as leave of the kind due.

Costs shall follow the event. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22nd day of May, 2024.*



KALIM ARSHAD KHAN

Chairman



MUHAMMAD AKBAR KHAN

Member (Executive)

major punishment; that show cause notice was issued to the appellant, resultantly, he was dismissed from service vide impugned order dated 08.11.2022.

2. Feeling aggrieved, he filed departmental appeal but the same was rejected vide order dated 06.01.2023, therefore, he 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, learned District Attorney and learned counsel for private 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. True that departmental proceedings and criminal proceedings could run simultaneously but it is equally true that in case, where the department has not proceeded in accordance with the prescribed procedure for conducting inquiry, in that situation, the inquiry cannot be made basis for penalizing a civil servant. In this case, although, an inquiry was conducted by the SDPO Banda Daud Shah, Karak, but in the inquiry proceedings the appellant was not confronted with any material with which he was charged nor any



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.269/2023

Date of presentation of Appeal.....02.02.2023
Date of Hearing.....22.05.2024
Date of Decision.....22.05.2024

Nasir Iqbal, Ex-Constable No.117, Police Force,
Karak.....(*Appellant*)

Versus

1. **The Provincial Police Officer**, Khyber Pakhtunkhwa, Peshawar
2. **The Regional Police Officer**, Kohat Region, Kohat.
3. **The District Police Officer**, Karak.....(*Respondents*)

Present:

Mr. Ashraf Ali Khattak, AdvocateFor the appellant
Mr. Muhammad Jan, District AttorneyFor respondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED FINAL ORDER DATED 06.01.2023 PASSED BY THE RESPONDENT NO.2 ON THE DEPARTMENTAL APPEAL OF THE APPELLANT; PREFERRED AGAINST THE IMPUGNED ORIGINAL ORDER OB NO.584 DATED 08.11.2022 PASSED BY RESPONDENT NO.3.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case are that appellant was appointed as Constable on 05.08.2009; that he was charge sheeted on the basis of alleged involvement in extra departmental activities as well as lodging of FIR No.338 U/S 118 Khyber Pakhtunkhwa Police Act, 2017 at Police Station Sarband, which was replied by him; that an inquiry was conducted against him, wherein, the inquiry officer recommended the appellant for