

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.253/2023

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

Muhammad Usman S/O Umar Khan, R/O Sarga Khero Khel, Lakki Marwat, Constable No. 238/LH, Police Station Basia Khel, Bannu.

.... (*Appellant*)

VERSUS

1. Regional Police Officer, Bannu Region, Bannu.
2. District Police Officer, Lakki Marwat.(*Respondents*)

Mr. Arbab Saif Ul Kamal
Advocate Forappellant

Mr. Asif Masood Ali Shah
Deputy District Attorney Forrespondents


Date of Institution..... 25.01.2023
Date of Hearing..... 28.02.2024
Date of Decision..... 28.02.2024

JUDGMENT

RASHIDA BANO, MEMBER (J):The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal, order dated 30.12.2022 of the respondent No. 1 be set aside to the extent of double punishments i.e reinstatement in service with immediate effect and period of dismissal/out of duty was treated as leave without pay.”

2. Through this single judgment, we intend to dispose of the instant service appeal as well as connected service appeals, which are mentioned below as in all these appeals common questions of law and facts are involved:




1. Service Appeal No. 254/2023
2. Service Appeal No. 255/2023
3. Service Appeal No. 256/2023

3. Brief facts of the case as given in the memorandum of appeal are that the appellants were inducted as Constables in police department and performed their duties upto the entire satisfaction of his superiors. During service they were dismissed from service on the allegation of facilitating the accused PASI, Naveed Nawaz for murder of Aleem Shah. Charge sheet alongwith statement of allegation was issued to the them, which was replied. Thereafter, final show cause notice was issued which was also replied. On 16.05.2022 major penalty of dismissal from service was imposed upon them without adopting codal formalities. Feeling aggrieved, appellants preferred departmental representation before respondent No.1, which was not responded within statutory period. That on maturity of the case, he filed service appeal No. 1428/2022 which was admitted notices were issued to the respondents for reply. In the meanwhile re-inquiry was ordered by accepting his departmental appeal and they were reinstated into service with immediate effect and period of dismissal was treated as leave without pay. In light of fresh recommendation service appeal No. 1428/2022 was withdrawn with permission to file fresh, hence instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that charges levelled against the appellants have no nexus as they never facilitated the accused Naveed Nawaz, in the commission of offence and it was his own act; that appellants have not




been treated in accordance with law and rules because neither any statement of any witnesses were recorded in presence of appellants nor they were afforded opportunity of cross-examinations; that absence of the appellants were not on their own part but it was due the illegal order of the respondents where they were kept away from duty. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant was proceeded against departmentally on the allegation of facilitating the accused Naveed Nawaz charged in criminal case vide FIR No. 1329; that inquiry was conducted into the matter and inquiry officer in his finding report has proved the appellants guilty of misconduct; that the period during which the appellants was absent/out of service does not entitle him for any monetary benefits, therefore, punishment has rightfully awarded to him as per law.

6. Perusal of record reveals that appellants were issued charge sheet alongwith statement of allegation that they while posted MHC Police Post City Lakki facilitated the proclaimed offender Naveed Nawaz. In this regard DSP/Hqrs was appointed as inquiry officer who after inquiry found the appellants guilty of misconduct upon which impugned order of dismissal from service dated 18.05.2022 was passed. Appellants assailed that order wherein appellate authority partially accepted the appeals and ordered re-inquiry into the matter vide order dated 06.06.2022.

7. Perusal of record further reveals that during re-inquiry, appellants were exonerated from the charges levelled against them, that's why they were reinstated into service by the authority. When the appellants were declared innocent by the enquiry officer in the re-enquiry then they ought to have been granted the back benefits for the period they were kept out of service for no fault of their own. Reliance in this regards has rightly been placed by the learned counsel for the appellants on



2021 SCMR 962 titled "Muhammad Sharif and others-versus-Inspector General of Police, Punjab, Lahore and others" wherein it has been held that a civil servant once exonerated from the charges would stand restored in service as if he were never out of it and would be entitled to back benefits.

7. For what has been discussed above, we accept the instant appeal as well as connected appeals by allowing the appellants back benefits for the period they remained out of service. Costs shall follow the event. Consign.

8. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 28th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER


28.02.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali

Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we accept the instant appeal as well as connected appeals by allowing the appellants back benefits for the period they remained out of service. 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 28th day of February, 2024.*



(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

23.11.2023

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

2. Learned counsel for the appellant argued that appellant was awarded major punishment of dismissal from service vide order dated 16.05.2022 on the ground of involvement in the criminal case vide FIR No. 1329/2021 under section 302/34 registered dated 03.10.2021 police station Lakki Marwat. Appellant filed departmental appeal where in appellate authority directed the re-enquiry and after re inquiry appellant exonerated from charges and in consequences of the exoneration from the charges appellant was reinstated into service vide order dated 03.12.2022 with immediate effect and period of dismissal out of duty was treated as leave without pay. Learned counsel argued that in accordance with the verdicts of superior court, when a civil service ^{entire} ~~is~~ exonerated from the charges he will have to be reinstated into service with all back benefits because he was kept away from his work place and cannot be attributed to his absence from duty on his part and it was out step taken by the authority therefore appellant is also entitled for all back benefits. Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security fee within 10 days. Written reply on behalf of respondents have already been submitted. Adjourned. To come up for arguments on 28.02.2024 before D.B. P.P given to the parties.


(Rashida Bano)
Member (J)