

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.394/2016

Date of presentation of appeal.....13.04.2016
Dates of Hearing.....16.05.2024
Date of Decision.....17.05.2024

Muhammad Hassan S/O Nawab Khan-R/O Zaidullah Killay Tehsil and District Charsadda Ex-Patwari Revenue Department Nowshera.
.....(*Appellant*)

Versus

1. **Commissioner Peshawar Division, Peshawar.**
2. **Deputy Commissioner, Nowshera.....(Respondents)**

Present:

Miss. Naila Jan, Advocate.....For appellant.
Mr. Muhammad Jan, District Attorney.....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 17.02.2016, CONVEYED VIDE LETTER DATED 01.04.2016 PASSED BY RESPONDENT NO.1, WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST ORDER DATED 18.09.2015 PASSED BY RESPONDENT NO.2 THROUGH WHICH APPELLANT WAS DISMISSED FROM SERVICE, HENCE THE INSTANT APPEAL.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts gathered from the memo and grounds of appeal are that the appellant was serving as Patwari in the Revenue Department Nowshera and had rendered 13 years service in various Patwar Circles; that one Zardin Khattak had filed baseless complaint against the appellant in the Anti-Corruption Establishment, Nowshera, alleging therein that inspite of receipt of Rs.100000/-, the appellant had delivered him fake documents

of land bearing Khasra No. 1208 measuring 99 Kanal and 2 marlas having no record; that on the basis of the complaint, an FIR was registered against the appellant; that another person namely, Shah Hawas Khan had also filed complaint against the appellant alleging therein that the appellant had received Rs. 16000/- and Rs. 4000/- as bribe in the year 2009 on account of preparation of Khasra Girdawri of shamilat land bearing khasras No. 14,44 and 326 of mouza Namal Sara Toya and 1350 of mouza Garu but despite taking bribe prepared, the appellant delivered him fake documents of Girdawari; on that allegation another FIR was also lodged against the appellant in the P.S Anti Corruption, Nowshera; that on the basis of both FIRs, respondent No.2 initiated enquiry proceedings against the appellant; that after conducting enquiry, show cause notice was issued to the appellant, which was replied by the appellant; thereafter the appellant was dismissed from service vide impugned order dated 18.09.2015; that the appellant preferred departmental appeal against the impugned dismissal order on 08.10.2015, which was rejected vide order dated 17.02.2016, hence, the instant service appeal on 13.04.2016.

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 defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

4. 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).

5. Perusal of record reveals that the appellant, while serving as Patwari in the respondent department, two separate complaints were received against him by the Deputy Commissioner Nowshera through Anti-Corruption Establishment Nowshera filed by Mr. Zadin Khattak and Mr. Shawas Khan against the appellant, in which FIRs were also registered against him for receiving illegal gratification and issuing fake documents. In pursuance of the said two complaints, the competent authority (Deputy Commissioner Nowshera) ordered an enquiry into each complaint through AAC-II, Nowshera. On 12.08.2015, the Inquiry Officer had conducted the enquiry and concluded that the appellant was held guilty in issuing false and bogus fard/girdawari to the complainant and recommended him for major penalty. Show cause notice was issued to the appellant on 31.08.2015, which was replied by the appellant on 07.09.2015. Reply of show cause notice was found devoid of reason and sense, thus the appellant was dismissed from service vide order dated 18.09.2015. The appellant then preferred departmental appeal on 18.10.2015, which was rejected on 17.02.2016.

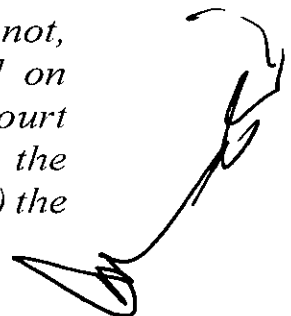
6. There is no denial of the fact that different proceedings under different laws/rules can run simultaneously. In this case also there were two criminal proceedings started by the Anti-Corruption Establishment and departmental proceedings started by the departmental authority against the appellant. The appellant might have secured acquittal in the criminal cases but acquittal is not always a ground for absolving a civil servant of the charges of misconduct if proven during the enquiry conducted by the departmental authorities for the sole reason that standards of evidence and proof in criminal and the departmental proceedings are entirely different from each other. Criminal proceedings are

decided on the basis of benefits of doubt while the departmental proceedings are proved on the basis of preponderance of evidence or balance of probabilities.

7. When we see this case in the light of the above, especially the enquiry report, we find that enquiry was conducted properly by associating the appellant, wherein the charges were proved. The enquiry officer found that from the record the appellant Muhammad Hassan, Ex-Patwari Mouza Garu, Nizam Pur had issued Khasra Girdawari pertaining to Khasra No. 326 and 1350 fraudulently and in excess of his power. These findings of the Enquiry Officer could not be rebutted by the appellant.

8. We can derive wisdom from the judgment of the august Supreme Court of Pakistan reported as 2022 SCMR 1770 titled "Faraz Naveed versus District Police Officer Gujrat and another", wherein the august Supreme Court of Pakistan was pleased to deliberate on simultaneous conduct of criminal and departmental proceedings as under:

"10. It is lucidly straightened out from the record that, after proper inquiry, the petitioner was found guilty in a heinous crime and he was rightly dismissed from service. If the acquittal is found as a result of extending benefit of doubt or some other technical reasons, there is no bar for initiation of departmental enquiry and it is the prerogative rather an onerous responsibility of the employer to consider nature of offence for an appropriate action interdepartmentally. According to Rule 16.3 of the Police Rules, 1934, it is unambiguously provided that when a Police Officer has been tried and acquitted by a criminal Court he shall not be punished departmentally on the same charge or on a different charge based upon the evidence cited in the criminal case, whether actually led or not, unless; a) the criminal charge has failed on technical grounds; b) in the opinion of the Court or of the Superintendent of Police the prosecution witnesses have been won over; c) the



court has held in its judgment that an offence was actually committed and that suspicion rests upon the Police officer concerned; d) the evidence cited in the criminal case discloses facts unconnected with the charge before the Court which justify departmental proceedings on a different charge; and e) additional evidence admissible under Rule 16.25 (1) in departmental proceedings is available. Whereas in Sub- Rule 2, it is further explicated that "Departmental proceedings admissible under Sub-Rule (1) may be instituted against lower subordinates by the order of the Superintendent of Police but may be taken against upper subordinates only with the sanction of the Deputy Inspector-General of Police; and a police officer against whom such action is admissible shall not be deemed to have been honorably acquitted for the purpose of Rule 7.3 of the Civil Services Rules (Punjab), Volume I- Part 1". However in this case, the proceedings against the petitioner were initiated under Rule 6 of the Punjab Police (Efficiency & Discipline) Rules, 1975 in which no bar is encapsulated or put in a nutshell that criminal trial or the disciplinary proceedings on account of misconduct cannot be continued in parallel or simultaneously or, in case of acquittal, the wrongdoer cannot be tried departmentally on the same charges.

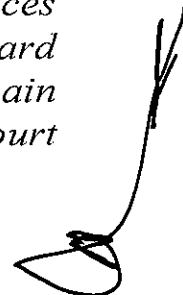
11. The rationale and astuteness of initiating disciplinary proceedings by the employer is to unmask whether the charges of misconduct leveled against the delinquent are proved or not and in case his guilt is proved, what action should be triggered against him under the applicable Service Laws, Rules and Regulations, which may include the imposition of minor or major penalties in accordance with the fine sense of judgment of the competent Authority. Quite the reverse, the acuteness and *raison d'être* to set into motion the criminal prosecution is altogether different where the prosecution has to prove the guilt of accused beyond any reasonable doubt. Both have distinctive characteristics and attributes with regard to the standard of proof. It is well settled exposition of law that the prosecution in the criminal cases as well as the departmental inquiry on the same allegations

can be conducted and continued concurrently at both venues without having any overriding or overlapping effect. The object of criminal trial is to mete out punishment of the offences committed by the accused while departmental inquiry is inaugurated to enquire into the allegations of misconduct in order to keep up and maintain the discipline and decorum in the institution and efficiency of department to strengthen and preserve public confidence. In the departmental inquiry, the standard of proof is that of "balance of probabilities or preponderance of evidence" but not "proof beyond reasonable doubt", which strict proof is required in criminal trial because the potential penalties are severe. In the case of Dr. Sohail Hassan Khan and others vs. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708), this Court held that a civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge arising out of the same impugned transaction; these two are entirely different jurisdictions with different standards of proof as well as procedures; criminal prosecution requires strict proof through a narrowly jacketed procedure and, thus, State's failure on criminal plane does not provide shield of double jeopardy to a delinquent officer. Whereas in the case of District Police Officer, Mianwali and 2 others vs. Amir Abdul Majid (2021 SCMR 420), this Court again held that a civil servant facing expulsive proceedings on departmental side on account of his indictment on criminal charge may not save his job in the event of acquittal as the department still may have reasons/material, to conscionably consider his stay in the service as inexpedient; there are additional reasons to disregard his acquittal inasmuch as criminal dispensation of justice involving corporeal consequences, comparatively, requires a higher standard of proof so as to drive home the charge beyond doubt, an exercise to be routed through a procedure stringently adversarial, therefore, factuality of the charge notwithstanding, procedural loopholes or absence of evidence, sufficient enough to sustain the charge, at times occasion in failures essentially to

maintain safe administration of criminal justice out of abundant caution. Departmental jurisdiction, on the other hand, can assess the suitability of a civil servant, confronted with a charge through a fact finding method, somewhat inquisitorial in nature without heavier procedural riders, otherwise required in criminal jurisdiction to eliminate any potential risk of error, therefore, the Tribunal has undoubtedly misdirected itself in reinstating the respondent, considering his acquittal as the sole criterion in isolation to the totality of circumstances where under he had succeeded to vindicate his position. Reference may be made to the cases of Dr. Sohail Hassan Khan and others v. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708), Liaqat Ali v. Government of N.W.F.P. through Secretary Health, Peshawar and others (2011 PLC (C.S.) 990), Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan (PLD 2010 SC 695), Government of Pakistan through Secretary Ministry of Finance and others v. Asif Ali and others (2007 PLC (C.S.) 271), Superintendent of Police, D.I. Khan and others v. Ihsanullah (2007 SCMR 562), Sami Ullah v. Inspector-General of Police and others (2006 SCMR 554), Ractor Comsats v. Ghulam Umar Kazi (2006 SCMR 1894), Executive Engineer and others v. Zahid Sharif (2005 SCMR 824), Khaliq Dad v. Inspector-General of Police and 2 others (2004 SCMR 192), Arif Ghafoor v. Managing Director, H.M.C., Texila and others (PLD 2002 SC 13), Mir Nawaz Khan v. Federal Government through Secretary, Ministry of Finance, Islamabad and 2 others (1996 SCMR 315), Talib Hussain v. Anar Gul Khan and 4 others (1993 SCMR 2177), Mud Izharul Ahsan Qureshi v. Messrs P.I.A.C. (1994 SCMR 1608), Muhammad Nazir v. The Superintendent of Police, Toba Tek Singh and others (1990 SCMR 1556) Muhammad Tufail v. Assistant Commissioner/Collector (1989 SCMR 316), Muhammad Saleem v. Superintendent of Police, Sialkot and another (PLD 1992 SC 369), Muhammad Ayub v. The Chairman, Electricity Board, WAPDA, Peshawar and another (PLD 1987 SC 195), The Deputy Inspector-General of Police, Lahore and others v. Anis-ur-Rehman

Khan (PLD 1985 SC 134) and Begum Shams-un-Nisa v. Said Akbar Abbasi and another (PLD 1982 SC 413).

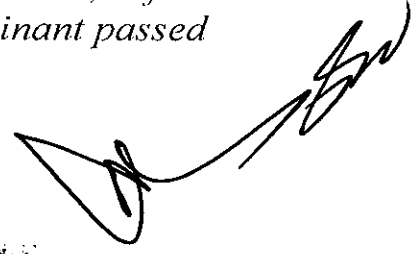
12. *The Supreme Court of India in the case of Union Territory, Chandigarh Administration and Ors. vs. Pradeep Kumar and Anr. (2018) 1 SCC 797, held that the acquittal in a criminal case is not conclusive of the suitability of the candidates on the post concerned. While in the recent unreported judgment of Supreme Court of India in the case of Union of India vs Methu Meda in Appeal No. 6238 of 2021, (arising out of Special Leave Petition (C) No. 23856 of 2014), the precise facts were that the respondent was found involved in an offence of kidnapping for demand of ransom. He was tried before the Sessions Court but was acquitted because the complainant turned hostile. The respondent applied for the post of Constable in Central Industrial Security Force and got selected. In his credentials and antecedents, he mentioned the registration of criminal case and acquittal. As the offer letter was conditional, therefore, he was not allowed to join and his case was referred to Standing Screening Committee which examined the cases of several candidates including the respondent and passed an order that respondent was not eligible for appointment. The respondent filed Writ Petition in the High Court of Madhya Pradesh which was allowed. The said order was assailed before the Division Bench by filing Writ Appeal, but State appeal was dismissed. Finally both the judgments were challenged in the Supreme Court which took the guidance from earlier judgment rendered in the case of Mehar Singh wherein it was held inter alia that the police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. Finally the Court held as under:-*



"21. In view of the aforesaid, it is clear the respondent who wishes to join the police force must be a person of utmost rectitude and have impeccable character and integrity. A person having criminal antecedents would not be fit in this category. The employer is having right to consider the nature of acquittal or decide until he is completely exonerated because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee and the decision of the Committee would be final unless mala fide. In the case of Pradeep Kumar (supra), this Court has taken the same view, as reiterated in the case of Mehar Singh (supra). The same view has again been reiterated by this Court in the case of Raj Kumar (supra).

22. As discussed hereinabove, the law is well settled. If a person is acquitted giving him the benefit of doubt, from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment, that too in disciplined force. The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee. The mere disclosure of the offences alleged and the result of the trial is not sufficient. In the said situation, the employer cannot be compelled to give appointment to the candidate.....

13. The learned counsel for the petitioner relied on the case of Dr. Muhammad Islam.Vs. Government of N.W.F.P. through Secretary, Food, Agriculture, Livestock and Cooperative Department, Peshawar and 2 others (1998 SCMR 1993). Before dilating upon the ratio decidendi of the aforesaid dictum, few facts of the case are most essential to be jot down. In this case on 21.8.1989, an FIR under Section 302/34, P.P.C. was registered against the accused on the statement of complainant at Police Station Katlang District Mardan for the murder of Sher Zamin. However, the Additional Sessions Judge, Mardan, after recording the statement of the complainant passed the following order on 9.6.1992:



"Statement of the complainant has already been recorded and placed on file. He does not charge the accused for the commission of the offence. In view of his statement, the learned S.P.P. also gave statement that he wants to withdraw from the prosecution against the accused.

In view of the above statements, no case stands against the accused, therefore, no charge is framed against them and they are discharged/acquitted from the charge levelled against them in the present case. They are on bail, their bail bonds stand cancelled and sureties discharged....."

14. This Court in the above case observed that after acquittal, the petitioner was reinstated with effect from 22nd of August, 1989 but the period from 22.8.1989 to the date of his assumption of duty was treated as extraordinary leave without pay. He filed a representation for payment of salary and allowances which was rejected then the appellant filed appeal before the N.W.F.P. Service Tribunal praying for the payment of salary and allowances to him for the said period. This claim of the appellant was contested by the Government on the ground that the acquittal of the appellant was based on a compromise between the parties. This being the position, acquittal of the appellant cannot be held to be honourable so as to entitle him to full pay and allowances for the said period. The Tribunal vide its decision held that appellant was acquitted on the basis of compromise with the complainant therefore his acquittal cannot be treated as honourable, however this court in the above case, held that all acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. This Court further observed that the provisions of F.R. 54 (a) have been declared un-Islamic by the Shariat Appellate Bench of this Court vide judgment rendered in the case of Government of N.-W.F.P. v. I.A. Sherwani and another (PLD 1994 SC 72). We have cautiously flicked through the aforesaid judgment and discovered that the judgment is in effect focused on "F.R. 53" (Fundamental Rule-53) which dealt with the entitlement of Government servants under suspension i.e. the

subsistence grant at one-third of the pay of the suspended Government servants but nothing to do with "FR-54". In the end the Court held that the Rule 53 of the Fundamental Rules and the Rule mentioned in Sl. No.106 and all the parallel Rules of the Provinces are repugnant to the Injunctions of Islam to the extent that they deprive Government servants of their full salary and other benefits during the period of their suspension. The reading of judgment in the case of Dr. Muhammad Islam, (supra) unambiguously leads to the conclusion that neither in this case any charge was framed nor any conviction was recorded but in the instant case a serious charge of murder was proved in the Anti-Terrorism Court and the petitioner was convicted for death penalty however in appeal, he was extended benefit of doubt which resulted his acquittal.

16. Benefit of doubt, as of right, is to be given to the accused when there is equal possibility of the accused being guilty or not guilty. Ref: Muhammad Ramzan versus The State (PLJ 1984 SC 61). If the facts and circumstances of the prosecution case are susceptible and amenable to two interpretations, one in favour of the prosecution and the other in support of accused, then in such eventuality, the benefit of doubt would be extended to the accused but the employer, while considering the issue of reinstatement as aftermath of acquittal of an already dismissed employee, shall have unbridled right and authority to dwell on and appraise the antecedent and fitness of such employee including the job profile and severity of the charges leveled against them.

17. The police force is a disciplined force with cumbersome accountability and responsibility of maintaining law and public order in the society and populace, therefore, any person who wants to be part of the disciplined force should be a person of utmost integrity and uprightness with unimpeachable/spotless character and clean antecedents. Despite acquittal, it is the privilege and prerogative of the employer which is in this case "Punjab Police Force". So, it is for the department to examine fairly and equitably whether the petitioner has been completely

exonerated or not and his further induction may not become a constant threat to the discipline of the police force and public confidence and may also not demoralize and undermine the environment and frame of mind of the upright and righteous members of the force, therefore a person having criminal antecedents would not be fit to be restored or reinstated to his previous position or post."

9. In view of the above discussion, instant appeal being devoid of merits is dismissed. Costs shall follow the events. Consign.

10. 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



RASHIDA BANO
Member (Judicial)

16th May, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Ghulam Bashir, Assistant Secretary for respondents present.

2. Arguments heard. To come up for order on 17.05.2024 before D.B. P.P given to the parties.



(Rashida Bano)
Member(E)

(Kalim Arshad Khan)
Chairman

Adnan Shah, P.A

ORDER

17th May, 2024

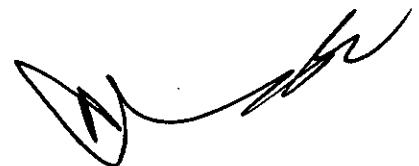
1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Ghulam Shabir, Assistant Secretary for the respondents present.

2. Vide our detailed judgement of today placed on file, on allowing this appeal we direct that the appellant be considered for promotion to the post of Junior Clerk against the quota reserved for promotion subject to his otherwise entitlement etc. 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 17th day of May, 2024.*



(Rashida Bano)
Member(Judicial)



(Kalim Arshad Khan)
Chairman

Adnan Shah, P.A