

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.571/2023

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

Mr. Atta Muhammad, ASI No.96/MR, (SSU) CEPEC Headquarter, Peshawar.
... (Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Commandant Special Security Unit (SSU) CEPEC, Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Commandant Special Security Unit (SSU) CEPEC, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Mr. Mir Zaman Safi
Advocate ... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For respondents

Date of Institution.....13.03.2023
Date of Hearing.....18.04.2024
Date of Decision.....18.04.2024

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:

“That on acceptance of this service appeal the impugned orders dated 26.10.2022 and 18.11.2022 may very kindly be set



aside and the respondents be directed to restore original rank of appellant i.e. Sub Inspector w.e.f 26.10.2022 with all back benefits. Any other remedy which this Tribunal deems fit and appropriate that may also be awarded in favour of appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant while posted as Incharge/Rashakai Special Economic Zone Platoon No. 13 SSU RBC ordered HC No. 170 Muhammad Ishaq for reporting to wing Commander Askari Cement Factory and issued Rawangi Mad No. 6 of the Roznamcha dated 26.06.2022 but when the appellant asked telephonically regarding arrival he denied the order, upon which appellant issued roznamcha mad No. 9 regarding his disobedience. He alleged that roznamcha Mad No. 6, 7, 8 & 9 were found misplaced from roznamcha register by Mr. Muhammad Ishaq, HC with the help of Mr. Tahir Khan, Inspector. In the meanwhile Mr. Muhammad Ishaq, HC filed a complaint against the appellant upon which respondent No. 3 issued impugned order dated 26.10.2022 whereby major penalty of reduction to a lower rank was imposed upon the appellant. Feeling aggrieved, he preferred departmental appeal which was rejected vide order dated 18.11.2022. Thereafter, he filed revision petition which was not responded to, hence the 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 appellant argued that the impugned orders are against the law, facts and norms of justice hence, not tenable and liable to be set aside; that the appellant has not been treated in accordance with law and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan; that no final show cause notice was served upon the appellant before issuance of impugned order; that neither regular inquiry has been conducted by the respondents and nor a chance of personal hearing and opportunity of cross examination was provided to the appellant and he was condemned unheard. He requested that instant appeal might be accepted.

5. Conversely learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant was found misbehaving and using threatening language with his senior officers, being a responsible police officer he disobeyed order of his seniors and broke the chain of command on the basis of which the competent authority issued charge sheet alongwith statement of allegations and after fulfillment of all codal formalities he was awarded major punishment of reduction to a lower rank.

6. Perusal of record reveals that appellant while posted as In-charge Rashakai Special Economic Zone Platoon No. 13 SSU RBC ordered HC No. 170 Muhammad Ishaq for reporting to wing Commander Askari Cement Factory and issued Rawangi Mad No. 6 of the Roznamcha dated 26.06.2022

but when the appellant asked telephonically regarding arrival, he denied the

order, upon which appellant issued roznamcha mad No. 9 regarding his disobedience. He alleged that roznamcha Mad No. 6, 7, 8 & 9 were found misplaced from roznamcha register by Mr. Muhammad Ishaq, HC with the help of Mr. Tahir Khan, Inspector. In the meanwhile Mr. Muhammad Ishaq, HC filed a complaint against the appellant on the basis of which appellant was issued with charge sheet having three allegations in it.

- 1. That you charged baseless allegation against his seniors for blackmailing them.*
- 2. You misbehaved with your senior officers and bypassed chain of command by writing in the daily diary against your senior Inspector Tahir Khan.*
- 3. That being a responsible police officer, you disobey the order of your seniors.*

Appellant was charge sheeted and proceeded against departmentally because he mentioned in daily diary No. 10 that daily diary No. 6 and 9 were removed from the register by Muhammad Ishaq HC with the help of Inspector Tahir Khan. Appellant in his reply mentioned that he took D.D No. 10 to Inspector Tahir Khan for forwarding it to his high ups but same was not sent by him. Therefore, appellant himself took the same to DSP Office and SP Admin Office for forwarding it to his high ups but both of them were reluctant and also refused to forward it. As a last resort appellant personally took D.D No. 10 to the office of Commandant which does not comes within the definition of bypassing chain of command.



7. Record further reveals that although inquiry officer recorded statement of Inspector Tahir Khan with whom appellant had issue, as upon his order constable, were reluctant to obey lawful orders of the appellant, being platoon In-charge, and refused to performed their duties assigned by him, therefore, he must be provided with an opportunity of cross examination upon Inspector Tahir Khan, which was not provided. Moreover, Inspector Tahir Khan also failed to produce any order of SP CPEC Mardan region in black & white about deputing constable/HC Umar Khan to Askari Cement as is alleged by him. If respondent department was enough fair and concerned about violating orders of superiors by passing chain of command in good faith and consider it as an integral part of service discipline. Then legally, speaking appellant was immediate boss of Muhammad Ishaq HC and said HC was bound to obey the legal orders of his deployment at Askari cement Factory which he did not obey rather misbehaved with appellant, therefore, he must be proceeded against but respondent instead of proceeding against him departmentally proceeded against the appellant who brought the matter into the notice of his high ups about missing/change of daily dairies and removal of it from register. Similarly no opportunity of cross examination upon DSP Saifullah Anjum was provided to the appellant which means that appellant was condemned unheard as he was awarded major punishment of reduction to lower rank.



8. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of *audi alteram partem* was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

9. For what has been discussed above, we are unison to accept the appeal as prayed for. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 16th day of April, 2024.*


(Fareena Paul)
Member (E)


(Rashida Bano)
Member (J)

12th Dec. 2023

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1. Learned counsel for the appellant and Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Khyal Roz DSP (Legal) for the respondents present.

2. Reply on behalf of the respondents submitted. Copy of the same was handed over to the learned counsel for the appellant. To come up for arguments on 16.04.2024 before D.B. P.P given to the parties.



(Kalim Arshad Khan)
Chairman

SCANNED
KPST
Peshawar

Mutazem Shah

ORDER


16.04.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to accept the appeal as prayed for. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 16th day of April, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

*Kaleemullah