

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was enlisted as Constable in Police Department in the year 2007 and later on he was promoted to the rank of Head Constable. While posted as IHC Police Station Kakki, he registered case FIR No. 351 dated 13.09.2021 under section 9(b) CNSA against the accused Azmar Khan. After registration of FIR, a complaint was lodged by the accused against the appellant on the basis of which charge sheet alongwith statement of allegation was issued to him which was replied by him. Inquiry was conducted as a result to which major punishment of demotion from the rank of Head Constable to the rank of Constable vide order dated 15.11.2021 was imposed upon the appellant. Feeling aggrieved, he filed departmental appeal, which was rejected on 22.12.2021, 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that the impugned order are illegal, unlawful, without lawful authority and void ab-initio, hence liable to be aside; that appellant has not been treated in accordance with law and rules; that proper inquiry was not conducted and no one was examined in presence of the appellant nor was any opportunity of cross examination was afforded to the appellant; that no show cause notice was issued to the appellant being mandatory under the law, that no chance of personal hearing was afforded to




him and he was condemned unheard which is against the norms of natural justice.

5. Conversely, learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that appellant falsely implicated accused Azmar Khan in a fake FIR. In this respect he filed complaint against him on citizen portal in which inquiry was conducted by SDPO Rural-II and the charges were proved in the preliminary inquiry on the basis of which he was awarded penalty of reduction to a lower rank in accordance with law.

6. Perusal of record reveals that the appellant was enlisted as Constable in Police Department in the year 2007 and later on he was promoted to the rank of Head Constable. While posted as IHC Police Station Kakki, he registered case FIR No. 351 dated 13.09.2021 under section 9(b) CNSA against the accused Azmar Khan. After registration of FIR, a complaint was lodge by the accused Azmar Khan against the appellant on the basis of which charge sheet alongwith statement of allegation was issued to him which was replied by him. Inquiry was conducted as a result of which major punishment of demotion from the rank of Head Constable to the rank of Constable vide order dated 15.11.2021 was imposed upon the appellant by authority.

7. Perusal of inquiry report reveals that inquiry officer recorded statements of Constable Nadeem No. 2245, Muhammad Nazir Khan 673 who are marginal witnesses of recovery memo of the criminal case FIR No. 351 registered against complainant Azmar Khan, Umer Niaz Khan, MHC Constable Bahadur

 Khan 1021 who accompanied the appellant at the time of recovery and more

importantly of the then accused now complainant Azmar Khan who filed complaint against the appellant on the basis of which inquiry was initiated against the appellant but neither opportunity of cross examination was provided to him nor statement were recorded in his presence which is essential requirements of fair trial, So, he was condemned unheard and awarded major penalty of reduction in 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 set aside the impugned orders and sent the matter for de-novo inquiry with direction to provide opportunity of cross examination to the appellant upon all the



witnesses and conclude the de-novo inquiry within sixty days after receipt of copy of this judgment. 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 23rd day of April, 2024.*

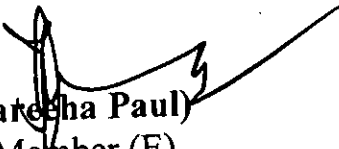

(Farzeha Paul)
Member (E)



(Rashida Bano)
Member (J)

*Kaleemullah

ORDER
23.04.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to set aside the impugned orders and sent the matter for de-novo inquiry with direction to provide opportunity of cross examination to the appellant upon all the witnesses and conclude the de-novo inquiry within sixty days after receipt of copy of this judgment. 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 23rd day of April, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)