

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.144/2019

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

Mr. Momin Khan Ex-ASI, Khyber Pakhtunkhwa, Elite Force.

.... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. District Police Officer, Nowshera.
3. Regional Police Officer, Mardan.
4. The Additional Inspector General of Police/Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.
5. The Additional Inspector General of Police, CTD, Khyber Pakhtunkhwa, Peshawar.
6. The Deputy Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Roeeda Khan
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....30.01.2019
Date of Hearing.....13.05.2024
Date of Decision.....13.05.2024

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 the impugned orders dated 13.03.2018 and 11.01.2019 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits. Any other



remedy which this August Tribunal deems fit that may also be granted in favour of appellant.

2. Brief facts of the case are that appellant was appointed as Constable in the crimes investigation department on 05.04.1995. He was promoted to the rank of Head Constable in the 2005/06 and was further promoted to the rank of ASI. Later on he was transferred on deputation to Elite Force, Khyber Pakhtunkhwa. During service, he was implicated in a criminal case under section 302/324/148/149 PPC read with 7 ATA, vide FIR No. 794 dated 08.09.2010 of PS Pabbi Nowshera and another case under section 17/3 offences against property ordinance 1979 R/W 324/148/149/411 PPC 13 AO vide FIR No. 81 dated 81 01.02.2013 of PS Lahor Swabi. Later on he was acquitted in both the criminal cases by the competent court of law. When he went to joined his duty, he came to know that he was dismissed from service vide order dated 19.11.2012. After the submission of departmental appeal and rejection order against the impugned order he filed service appeal No. 1299/2015 which was accepted on 19.10.2017 and respondents were directed to conduct denovo inquiry within three months. Thereafter, he filed execution petition on 16.10.2018 he came to know that regarding dismissal order dated 13.03.2018. He filed departmental appeal which was rejected on 11.01.2019, hence the present 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 appellant has not been treated in accordance with law and rules; that no charge sheet, statement of

allegation and final show cause notice has been issued by the respondent department on the involvement in criminal case; that no regular inquiry has been conducted by the respondent and no chance of personal hearing has been provided to the appellant and he was condemned unheard; that appellant has been reinstated upon the direction of service tribunal on 19.10.2017 by the respondent department but without issuing codal formalities he was dismissed from service on 13.03.2018 which void and illegal. He requested that instant appeal might be accepted.

5. Conversely, learned Deputy District Attorney argued that appellant has been treated in accordance with law and rules; that appellant was dismissed from service on account of his involvement in criminal cases. He was proceeded against departmentally during the course of which he was called time and again but he did not bother to appear before the enquiry officer despite the fact that he did not bother to appear before the inquiry despite the fact that in order to ensure his appearance, he was informed through newspaper notice published in daily "Aaj" but fiasco. Therefore, after fulfillment of all legal and codal formalities major penalty of dismissal was imposed upon him.

6. Perusal of record reveals that appellant was initially appointed as Constable in the Crimes Investigation Department, now Counter Terrorism Department (CTD), on 05.04.1995. Ever since his appointment, the appellant had performed his duties as assigned with zeal and devotion and there was no complaint. He was promoted as Head Constable in the year 2005/06 and then later on promoted as ASI. Appellant was later on transferred on deputation to the Elite Force, Khyber Pakhtunkhwa. The appellant, alongwith some other family members, was implicated in a criminal case under section 302/324/148/149 PPC read with 7 ATA, vide FIR No.794 dated 08.09.2010 of Police Station Pabbi, Nowshera and another case u/s 17/3 offences against property ordinance 1979 R/W 324/148/149/411 PPC/13 AO vide FIR No.81

dated 01.02.2013 of PS Lahor, Swabi. The appellant duly informed his department about his implication in criminal case. Later on he has been acquitted in the above criminal cases. After acquittal, appellant duly reported for duty in the respondent department but he has been dismissed from service on 19.11.2012 by the respondent department. Appellant filed service appeal No. 1299/2015 against the impugned order which was accepted on 19.10.2017 and appellant has been reinstated into service and case was sent to respondent department to conduct de-novo inquiry within a period of three months. Due to non-implementation of the judgment the appellant filed execution petition No.30/2018 against the respondent department. During proceeding of execution petition on 16.10.2018, the appellant came to know regarding dismissal order dated 13.03.2018.

7. Perusal of de-novo inquiry report reveals that enquiry officer in his report mentioned that he summoned Inspector Alam Zeb Khan, Inspector Hidayat ur Rehman. SI Fazal Miraj and SI Wafadar Khan but none of them appeared before inquiry officer for recording their statements to support the involvement of the appellant in the criminal cases. Moreover complainant of the said criminal cases also not appeared before inquiry officer to support the factum of guilt or involvement of the appellant in criminal cases. The most important factor is appellant is acquitted in the criminal cases on the basis of which charge sheet was issued to him.

8. It has been held by the Apex Court that all acquittals are certainly honorable. There can be no acquittal, which may be said to be dishonorable. Implication of the appellant in the criminal cases was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service.


9. It is established from the record that charges of involvement in the criminal case ultimately culminated in honorable acquittal of appellant by the competent Court of



Law in the above-mentioned criminal cases. In this respect, we have sought guidance from 1988 P.L.C (C.S) 179, 2003 S.C.M.R 215 and P.L.D 2010 Supreme Court 695.

10. For what has been discussed above, the appeal in hand is partially allowed by setting aside the impugned orders and reinstate the appellant into service, however period he remained out of service during custody will be treated as leave without pay. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day May, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*M.Khan

08th May, 2024

1. Appellant alongwith his counsel present. Mr. Ijaz Khan, DSP (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Learned counsel for the appellant seeks some time for preparation of brief. Granted. To come up for arguments on 13.05.2024 before the D.B. Parcha Peshi given to the parties.

(Muhammad Akbar Khan)
Member (Executive)

(Kalim Arshad Khan)
Chairman

Naeem Amir

ORDER

13.05.2024

1. Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, the appeal in hand is partially allowed by setting aside the impugned orders and reinstate the appellant into service, however period he remained out of service during custody will be treated as leave without pay. 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 13th day May, 2024.*

(FAREEHIA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)

*M.Khan

2nd Nov, 2023

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

2. 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 10.01.2024 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar

(Muhammad Akbar Khan)
Member (E)

(Rashida Bano)
Member (J)

Kamrullah

10.01.2024 1. Clerk of learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Clerk of for appellant requested for adjournment on the ground that learned counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 08.05.2024 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar

(Rashida Bano)
Member (J)

(Kalim Arshad Khan)
Chairman

*Kaleemullah