

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1116/2022

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Anwar Khan S/O Shah Said R/O Sipah Ghaibikhel, Village Malang
Ghari, P.O Box Bara, Tehsil Bara, District Khyber.

.....(Appellant)

Versus

1. District Police Officer, Khyber.
2. Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
.....(Respondents)

Mr. Zahanat Ullah,
Advocate ... For appellant
Mr. Asif Masood Ali Shah,
Deputy District Attorney. ... For respondents

Date of Institution..... 18.02.2022
Date of Hearing..... 03.06.2024
Date of Decision..... 03.06.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 21.04.2020, whereby the appellant was dismissed from service. It has been prayed that on acceptance of the appeal, the impugned order dated 21.04.2020 might be set aside and the respondents be directed to reinstate the appellant on his job with all back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the Police Department as Constable in the year



2010. His services were handed over by the then Political Agent, Khyber to one Imran Afridi (Malik). On 09.09.2019, while performing his duties, the appellant was arrested alongwith the sons of the Malik by the ANF officials and an FIR was lodged against them. Since then, the appellant was behind the bar at Adyala jail. The trial was conducted and Judge Special Court (Control of Narcotic Substances), Islamabad vide judgment dated 30.03.2022, acquitted the appellant from the charges leveled against him. Thereafter, the appellant approached the respondents and informed them regarding his absence from duty. On 02.04.2022, the respondents handed over dismissal order to him. Feeling aggrieved, he preferred departmental appeal to respondent No. 2 on 02.04.2022 but no action was taken on it; hence the instant service appeal

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

4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant was not treated in accordance with law and his rights secured and guaranteed under the law were badly violated. He argued that absence of the appellant was not willful but was due to his arrest in a fake FIR and after conclusion of the trial he was acquitted of all the charges leveled against him. He argued that the appellant had long service at his credit and the penalty awarded to him was too harsh



and was liable to be set aside. He requested that the appeal may be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant, while posted at Police Station Bara, remained absent from lawful duty w.e.f. 06.08.2019 and was arrested by ANF at Islamabad Toll Plaza on 12.09.2019 with 128 Kgs. of Narcotics and an FIR was registered against him, alongwith other accused. Charge sheet and summary of allegations were issued to him. Departmental enquiry was conducted wherein proper opportunity of defence was afforded to him. In the inquiry proceedings, it was established that he was ill-reputed and involved in heinous crimes, including drugs peddling, after which he was issued a final show cause notice but he failed to prove his innocence and was dismissed from service. He further argued that the appellant was, later on, acquitted by the Court in case FIR No. 185/19, however the criminal proceedings and departmental proceedings were two different entities and fate of one did not affect the other. He requested that the appeal might be dismissed.

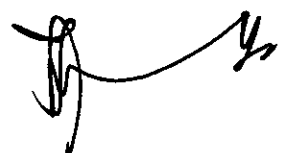
6. As per a duty order, copy produced by the learned counsel for the appellant, he, alongwith three others, while posted as Levy Sepoy at Bara, were detailed with Mr. Imran Khan, Senior Vice President, ANP KPK for security purpose. While the appellant was on duty, he was arrested by the ANF, North Rawalpindi; FIR No. 185/19 dated 09.09.2019 u/s 6/9(c) and 14, 15, 16 of CNSA 1997 was registered against him and others. He was put behind the bars and later on acquitted



by the learned Judge, Special Court (Control of Narcotic Substances) Islamabad vide judgment dated 30.03.2022. His acquittal was made on the ground that the prosecution miserably failed to bring any evidence on record to connect him with the offence as per the FIR. The District Police Officer, Khyber, after getting knowledge of the FIR, placed him under suspension vide an order dated 29.09.2019. Departmental proceedings were also initiated against him on 08.10.2019 and as a result of an inquiry, he was awarded major punishment of dismissal from service. The only charge against him was that he was absent from lawful duty from 06.08.2019 and on 12.09.2019, he was arrested in uniform by ANF at Islamabad Toll Plaza with other accused and 128 Kgs. of narcotics.

7. A one-page inquiry report attached with the reply of respondents shows that the Inquiry Officer conducted the inquiry through "various sources", according to which, the appellant was ill-reputed and involved in drug peddling. He referred to "local sources at Bara" also, which revealed that he was involved in narcotics and illegal activities. Ironically, neither the "various sources" nor the "local sources at Bara" had been revealed in the inquiry report. The report was also silent whether those sources were shown or placed before the appellant for cross-examination, which means that requirements of fair trial had not been fulfilled by the Inquiry Officer.


8. The appellant was dismissed from service on the sole ground of FIR. He was later on acquitted by the competent court of law. It has been



held by the superior fora that all acquittals are certainly honourable. There could be no acquittal which might be said to be dishonourable. Nomination/involvement of the appellant in criminal case was the sole 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 his service. In this respect, guidance has been sought from 1988 PLC(CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court 695.

9. In view of the above discussion, the appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 03rd day of June, 2024.*


(FARZEEN PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

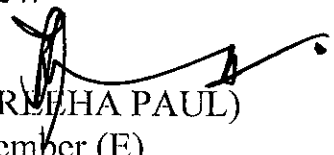
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03rd June, 2024 01. Mr. Zahanat Ullah, Advocate for the appellant present.
Mr. Asif Masood Ali Shah, Deputy District Attorney for the
respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the
appeal in hand is allowed as prayed for. Cost shall follow the
event. Consign.

03. *Pronounced in open court in Peshawar and given under
our hands and seal of the Tribunal on this 03rd day of June,
2024.*


(FARZHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS