

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1210/2022

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

Iftikhar Ali S/O Mian Gul (SI 426/MR District Police Mardan), Village
Kalushah Haji Zarghon Shah Killi Tehsil Takht Bhai District Mardan.

... (Appellant)

VERSUS

1. The Secretary, Home Department, Khyber Pakhtunkhwa, Peshawar.
2. The Inspector General of Police Khyber Pakhtunkhwa Peshawar.
3. Regional Police Officer Mardan.
4. District Police Officer, Mardan.

... (Respondents)

Mr. Muhammad Irshad
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....25.07.2022
Date of Hearing.....27.03.2024
Date of Decision.....27.03.2024

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 the appellant may please be restored to the position prior to 13.06.2021 with back service benefits and seniority may please be ordered in accordance with merit as appellant has been declared innocent by the concern judicial magistrate and orders of respondents bearing No.2178 dated 19.11.2021 1608-09/ES dated 25.02.2022 and



1476-83 dated 06.07.2022 may please be declared null and void and without lawful authority.

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was posted as SHO at Police Station Toru in District Police Office Mardan. During service, he was charged in FIR No. 684 dated 13.06.2021 U/S 161, 162, 119B, 118D, Act-2017 PPC on the basis of which he was suspended and later on major penalty of reduction in pay by one stage was awarded to the appellant vide order dated 19.11.2021. Feeling aggrieved, he filed departmental appeal on 24.11.2021, which was rejected on 25.02.2022. Then he filed revision petition upon which punishment is effective only for sixty days, hence, the present 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 orders are illegal, unjustified and against the principles of natural justice, hence liable to be set aside; that the respondents had no authority to lodge FIR against the appellant as the allegations/matter pertains to anti corruption department, hence respondents had acted beyond their authority, by imposing major penalty; that appellant was acquitted on 22.09.2021 by the competent court of law and was punished by DPO which is utter disregard



of the principles; that appellant was not provided opportunity of hearing and he was condemned unheard.

5. Conversely, learned District Attorney contended that he while posted as SHO PS Toru was placed under suspension on account of gross misconduct by demanding an amount of Rs. two lacs as bribe from a poor man named Adil S/O Nausher on account of extending help by Toru Police in recovering his missing goats , but due to non-availability of the said amount with the Adil, S.I Iftikhar Khan Ex-SHO PS Toru took two goats from him as illegal gratification vide FIR No. 684 dated 13.06.2021 Police Station Toru on the basis of which he was proceeded against departmentally by issuing charge sheet and statement of allegation and enquiry was entrusted to the then SDPO TakhtBhai. During the course of inquiry appellant submitted his reply which was found unsatisfactory and after fulfillment of all legal and codal formalities, competent authority imposed major penalty of reduction in rank from ASI to Head Constable.

6. Perusal of record reveals that appellant was serving in the respondent/department as Station House Officer (SHO) at Police Station Toru, Mardan when on 13.06.2021, he was charged in FIR No.684 U/S 161, 162, 119B, 118D, Act-2017 PPC due to which he was placed under suspension. Respondent initiated departmental disciplinary proceeding against the appellant on the allegation of demand of on amount of Rs.2 lacs as bribe from one Adil on account of extending help by him in tracing out his missing goats. Due to non-availability of said amount appellant



allegedly took two goats with him in respect of which FIR No.684 was also lodged. ASP Muhammad Qais Khan, SDPO Takht Bhai was appointed as inquiry officer on 17.06.2021 who submitted his report after completion of formalities on 08.07.2021 with recommendation of major punishment. Authority issued final show cause notice and vide order dated 19.11.2021 awarded punishment of reduction in pay by one stage.

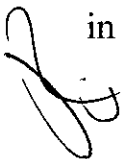
7. Appellant filed appeal against order dated 19.11.2021 wherein appellate authority i.e. RPO vide order dated 25.02.2022 enhanced punishment of reduction in pay by one stage into major penalty of reduction in rank from Sub Inspector to ASI. Appellant assailed order of enhancement in penalty passed by appellate authority in revision petition under Rule 11A wherein revisional authority vide order dated 06.07.2022 only specify the time period of reduction of lower rank as 60 days. Inquiry officer recorded statement of only one Adil who is also complainant of FIR No.684. Perusal of statement of said Adil reveals that missing goats were traced by him. When he traced missing goats himself, then in such a situation demand of huge amount of Rs.2 lac by appellant for extending help for tracing goats was not understand able to a prudent mind.

8. Moreover, he also stated that his owner himself gave two goats to the SHO and ordered him to accompany SHO to the police station, when police went there his owner demanded Rs.70000/- from him in lieu of those two goats. Statements of Owner/Master of Mr. Adil, complainant, Mr. Qadir Khan and his brother-in-law Bahar Ali were not recorded by the



inquiry Officer, who as per appellant, appeared before him for recording their statement. However, their statement recorded under section 164 CrPC before magistrate concerned is available on inquiry file wherein they stated that appellant had never demanded any bribe rather he helped them in tracing their missing goats. Therefore, they themselves offered him two goats as a gift which he refused to take. Owner Qadir further stated that he just to warn and to remain careful in future as punishment be concealed himself and kept in secret place his two goats with him and was not taken by the appellant as is alleged by the Adil.

9. It was duty of the inquiry officer that he must record statement of owner/master of Adil Khan when he appeared before him but non recording of his and his brother in law bahar Ali statement show the biasness of the inquiry officer, when master of Adil and owner of goats categorically stated that two goats were with him in such a situation question of demanding bribe of Rs.200000/- from Adil and in case of having no money appellant took two goats with him is not appealable to prudent mind. Otherwise too there is contradiction in respect of amount demanded as bribe because in criminal case, he stated it as Rs.70000/-, in an application to DIG, same was mentioned as Rs.200000/- which was mentioned in statement of allegation, where in an application to Chief Minister bribe amount is mentioned as Rs.100000/- , which shows that in fact no amount was demanded that Adil mentioned three different amount in three different application filed to different authorities which shows that



there was no such demand by the appellant and Adil just leveled allegation against him, otherwise if any bribe was demanded he should have mentioned that demanded amount in all three applications to three different forums.

10. It is also important to mention here that appellant was discharged from case FIR No.684 of Police Station Toru, Mardan vide order dated 22.09.2021. As per police Rules 16 (3) "If a civil servant is proceeded against on the basis of same charge upon which he was tried by the criminal court, then after earning acquittal he will have to be reinstated into service."

Moreover, inquiry officer had not provided chance of cross examination to the appellant upon Mr. Adil which is foremost essential requirement of fair trial and enquiry. It is very strange that appellate authority enhanced the penalty without giving any reasons upon appeal of the appellant and applying his mind by evaluating the only shaky statement of Mr. Adil that without providing any chance of defense to the appellant, which is not warranted having regards to the facts and circumstance of the case in hand.

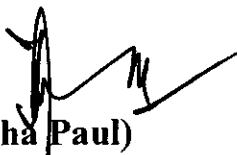
11. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles 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.

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

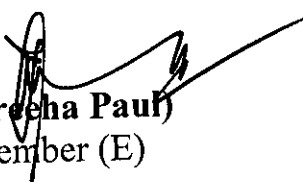
13. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27th day of March, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

ORDER
27.03.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for 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 27th day of March, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)