

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
AURANGZEB KHATTAK ... MEMBER (Judicial)

Service Appeal No.280/2023

Date of presentation of Appeal.....06.02.2023
Date of Hearing.....24.06.2024
Date of Decision.....24.06.2024

Syed Abdullah Hyder, Junior Clerk, District Police, Haripur, R/o
Village & P.O Changi Bandi, Tehsil & District Haripur..(*Appellant*)

Versus

1. **Provincial Police Officer**, Khyber Pakhtunkhwa, Peshawar.
2. **Regional Police Officer**, Hazara Region, Abbottabad.
3. **District Police Officer**, Abbottabad.....(*Respondents*)

Present:

Mr. Muhammad Aslam Tanoli, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

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**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST ORDER DATED 20.10.2022 OF THE
DISTRICT POLICE OFFICER HARIPUR
WHEREBY APPELLANT HAS BEEN DISMISSED
FROM SERVICE IN VIOLATION OF LAW, RULES
AND REGULATIONS GOVERNING TERMS AND
CONDITIONS OF APPELLANT'S SERVICE.**

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as per averments of the appeal, are that appellant was serving as Junior Clerk in the office of District Police Officer, Haripur; that on the basis of his alleged involvement in a criminal case, he was issued charge

sheet on 10.08.2022, which was replied by him by denying the allegations leveled against him; that vide order dated 20.10.2022, he was dismissed from service; that feeling aggrieved, he filed departmental appeal on 02.11.2022, which was not responded, hence, the instant service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s)

05. The appellant was proceeded departmentally on the basis of charge sheet, wherein, it was alleged that:

"It has come into the notice of undersigned after perusing case FIRs No.345 dated 06.08.2022 U/S 188 PPC (LSA) 3/4 (PS Sarai Saleh) and 349 dated 09.08.2022 U/S 504, 505, 506, 188, 298,295-A/153A, 147, 149, 7ATA/16 MPO PS Sarai Saleh, that you hold an illegal "Majlis" at your home without obtaining any permission from the competent forum. Similarly, you were also found involved in discovering an illegal, untraditional and un-scheduled procession, being part of a disciplined force, you did not bother to follow the due process of law for organizing the same. Your these acts/commissions are highly objectionable



and gross misconduct on your part in terms of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. Hence, charge sheeted"

After issuance of charge sheet, the DPO ordered for inquiry, which was accordingly conducted, wherein, the Inquiry Officer had given his findings that on 02.08.2022, the appellant had arranged sound system; the enquiry officer held the appellant guilty. While in the statement of allegations, the District Police Officer, Haripur has held that the appellant had arranged "Majlis" at his home. Besides, nothing has been specified in the statement of allegations as well as in the inquiry report that there was any illegality or objectionable act, committed by the appellant in the said Majlis.

06. As the appellant was proceeded and penalized for his alleged holding Majlis and there is nothing in the inquiry report regarding any illegality of the appellant regarding the above occurrence, therefore, the appellant seems to have been penalized for another incident and not the one he was charged with. The Inquiry Officer failed to collect any evidence regarding the allegations leveled against the appellant. No witness was examined by the Inquiry Officer thereby depriving the appellant of cross-examination and thus unfair treatment was meted out. The whole proceedings, especially, the inquiry proceeding is thus full of dents, hence, not sustainable.

07. The Supreme Court of Pakistan in a case reported as 2023 SCMR 603 titled "*Federal of Pakistan through Chairman Federal Board of Revenue FBR House, Islamabad and others*" held that:



"8. The primary objective of conducting departmental inquiry is to grasp whether a clear-cut case of misconduct is made out against the accused or not. The guilt or innocence is founded on the end result of the inquiry. The learned Service Tribunal may observe whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"). In a regular inquiry, it is a precondition that an evenhanded and fair opportunity should be provided to the accused and if any witness is examined against him then a fair opportunity C.A.33-K/2018 5 should also be afforded to cross examine the witnesses. In a departmental inquiry on the charges of misconduct, the standard of proof is that of balance of probabilities or preponderance of evidence. Where any authority regulates and performs its affairs under a statute which requires the compliance of the principles of natural justice then it should have been adhered to inflexibly.

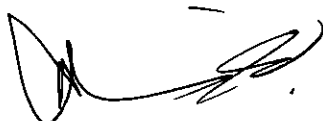
12. As a fall back argument, the learned counsel for the appellant insisted that if the learned Tribunal had detected some discrepancy or lacuna in the inquiry proceedings due to non-recording of evidence or not affording the right of cross examination to the respondent, then the right avenue was to remand the matter to the competent authority to conduct de novo inquiry, rather than granting the relief of reinstatement with conversion of major penalty into minor penalty. In our considerate insight, the remand of a case to the lower fora cannot be claimed as a vested right, but it is always the province of the Court or Tribunal to first figure out whether any material error or defect was committed by the Court in the order or judgment which really and adversely affected the corpus of the case and caused serious prejudice or injustice to the party requesting remand on some essential questions of law or fact which was ignored by the courts below while deciding the lis. In our analysis, we have not found any error on the part of the learned Tribunal, rather it is the inquiry officer who had committed grave procedural errors. We are sanguine that the inquiry officer cannot be expected to be trained as a judicial officer, but when the inquiry is conducted under some statute or enabling rules, then it is the onerous duty and responsibility



of the inquiry officer that he should be conversant with the applicable rules before accepting and performing the task of an inquiry officer and should also observe the principle of natural justice and due process of law. Due to the defective inquiry (deliberately or undeliberately), the ultimate sufferer would be the department which initiated the departmental proceedings on the charges of misconduct. Sometimes by dint of patent faults, blunders and/or procedural lapses, the accused is exonerated with the blessing of benefit of doubt. While conducting the inquiry, the procedure and parameters provided under E&D Rules should have been followed. The purpose of remand is not to provide an opportunity to rectify the lacunas or deliberate omissions or violations in the inquiry despite availability of unequivocal rules enumerating the procedure for guidance of inquiry officer. However, we feel it appropriate to note down that the matter of a departmental inquiry should not be conducted in a cursory or perfunctory manner and in order to improvise the norms and standards of departmental inquiry under the Civil Servants Act, 1973 and E&D Rules or in other enabling Rules, it would be advantageous that a "Handbook" of inquiry procedure be compiled by the appellant with the excerpts of all relevant Rules including the rule of natural justice and due process of law enshrined under Article 10-A of the Constitution for the step-by-step help and assistance of inquiry officers or inquiry committees so that in future, they may be well conversant with the precise procedure before embarking on the task of an inquiry and conduct the inquiry proceedings without ambiguities."

08. Therefore, the instant matter could not be remitted for filling the lacunas, especially when there is no solid ground for penalizing the appellant. The whole process shows that the impugned action of the department was not justified.

09. In view of the above situation, instant service appeal is accepted. The impugned order dated 20.10.2022 is set aside and the



Service Appeal No. 280/2023 titled "Syed Abdullah Hyder versus Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others", decided on 24.06.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Aurangzeb Khattak, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

appellant is reinstated into service with all back benefits. Costs shall follow the event. Consign.

10. Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 24th day of June, 2023.



KALIM ARSHAD KHAN
Chairman
Camp Court, Abbottabad



AURANGZEB KHATTAK
Member (Judicial)
Camp Court, Abbottabad

**Mutazem Shah **

25th Apr. 2024

1. Appellant in person present. Mr. Asif Masood -Ali Shah, Deputy District Attorney for the respondents present.

2. Former made a request for adjournment as his counsel was not available today. Adjourned. To come up for arguments on 24.06.2024 before D.B at Camp Court, Abbottabad. P.P given to the parties.

(Muhammad Akbar Khan)
Member (E)
Camp Court, A/Abad

(Kalim Arshad Khan)
Chairman
Camp Court, A/Abad

*Mutazem Shah *

S.A No.280/2023

ORDER

24th June. 2024

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

2. Vide our detailed judgment of today placed on file, instant service appeal is accepted. The impugned order dated 20.10.2022 is set aside and the appellant is reinstated into service with all back benefits. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 24th day of June, 2024.*

(Aurangzeb Khattak)
Member (J)
Camp Court, Abbottabad

(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad

Mutazem Shah

SCAWA
KP ST
Peshawar