

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR
AT CAMP COURT SWAT

BEFORE: RASHIDA BANO ... MEMBER (J)
MUHAMMAD AKBAR KHAN ... MEMBER (E)

Service Appeal No. 21/2022

Date of presentation of Appeal.....07.01.2022
Date of Hearing.....05.06.2024
Date of Decision.....05.06.2024

Mr. Irfan Ul Haq, Ex-Constable No. 48, Police Lines, Daggar, District Buner.....(Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat.
3. The District Police Officer, District Buner.....(Respondents)

UZMA SYED,
Advocate

For appellant.

UMAIR AZAM,
Additional Advocate General

For respondents

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"That on acceptance of this appeal the impugned orders dated 20.10.2021 and 28.12.2021 may very kindly be set aside and be re-instated the appellant into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant".

02. Brief facts of the case are that the appellant was appointed as Constable and posted in the Police Station Elam; that departmental proceedings were initiated against the appellant on the basis of daily diary No. 12 dated 23.09.2021 lodged by the SHO Police Station Elam and District Police Officer, District Buner issued impugned order 20.10.2021 whereby the appellant was awarded major penalty of dismissal from service. Feeling aggrieved from the impugned order dated 20.10.2021, the appellant filed departmental appeal which was rejected vide order dated 28.10.2021, hence preferred the instant service appeal on 07.01.2022

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned Additional Advocate General and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned orders 20.10.2021 and 28.12.2021 are against the law, fact, norms of natural justice hence liable to be set aside; that the appellant has not been treated in accordance with law, rules and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan; that no charge sheet and statement of allegation has been issued to the appellant before issuing the impugned order; that neither Show Cause Notice has been issued to the appellant nor opportunity of personal hearing was afforded to the appellant; that the entire proceedings were carried out at the back of the appellant and he has been condemned unheard. She submitted that no regular inquiry has been

conducted in the matter which is mandatory obligation on the part of competent authority.

05. On the other hand, learned Additional Advocate General contended that the impugned orders dated 20.10.2021 & 28.12.2021 have been passed in accordance with law, rules and justice, therefore, appeal of the appellant is liable to be dismissed; He submitted that the proper charge sheet/statement of allegations as well as Show Cause Notice was served on the appellant and after conducting proper departmental inquiry the appellant was dismissed from service; that proper chance of personal hearing was given to the appellant but he failed to justify his position. He further submitted that all the codal formalities were fulfilled before issuing the impugned order; that the appellant has been stopped due to his own conduct and the respondent department has not acted arbitrary and in malafide manner while issuing the impugned order dated 20.10.2021.

06. Scrutiny of record reveals that the appellant while posted as Constable in Police Station Elam District Buner was proceeded against on the charges leveled against him in the charge sheet/statement of allegations as under:-

(1) It has been reported against you vide DD No. 12 dated 23.09.2021 PS Elam, that you have lifted your duty point without permission.

(2) That you are found involved in immoral activities vide DD noted above.

(3) That you are of ill reputation in general public.

07. Record reveals that the departmental proceedings against the appellant were initiated on the basis of daily diary No. 12 dated 23.09.2021 lodged by the SHO of the police station Elam. There is no complainant in the case nor

any statement of the persons mentioned in the daily dairy report have been recorded. The inquiry officer has only recorded statement of Abdul Jaleel Moharriar Police Stataion Elam, Constable Sher Wali, Mr. Hazir Khan ASI, Fawad ullah H.C, Mian Hussian Shah ASI and Aziz ur Rahim, ASI as witnesses in the case. However, no opportunity was given to the appellant to cross examine the witnesses. The inquiry officer had recommended lodging of FIR against the appellant otherwise major punishment. Based on this incomplete/flimsy inquiry report the competent authority straight away dismissed the appellant vide impugned order dated 20.10.2021 without issuing of show cause notice. Arguments of the learned Additional Advocate General on behalf of the respondents that there is no provision of show cause notice under Police Rules, 1975 does not hold good as this Tribunal has delivered numerous judgment holding the issue of final show cause notice mandatory before passing the final order. Besides in the case of Syed Muhammad Shah delivered by a Supreme Court of Pakistan (PLD 1981 S.C-176) the august court held that rules devoid of provision of final show cause notice alongwith inquiry report were not valid rules. We hold that non issuance of show cause notice and non supply of the inquiry report to the appellant has caused miscarriage of justice as the appellant was not in a position to properly defend himself against the allegations.

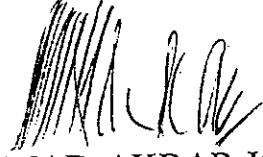
08. In view of the above discussion we are constrained to set aside the impugned orders dated 20.10.2021 and 28.10.2021, reinstate the appellant into service for the purpose of de-novo inquiry by giving proper opportunity of self defense and specially cross-examination to the appellant as enshrined in the

laws and rules with direction to conclude it within a period of 90 days after receipt of copy of this judgment. Costs shall follow the event. Consign.

09. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 05th day of June, 2024.*




(RASHIDA BANO)
Member (E)
Camp Court Swat




(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat

ORDER

- 05th June, 2024
1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present. Arguments heard and record perused.
 2. Vide our detailed judgment of today, separately placed on file, we are constrained to set aside the impugned orders dated 20.10.2021 and 28.10.2021, reinstate the appellant into service for the purpose of de-novo inquiry by giving proper opportunity of self defense and specially cross-examination to the appellant as enshrined in the laws and rules with direction to conclude it within a period of 90 days after receipt of copy of this judgment. Costs shall follow the event. Consign.
 3. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 05th day of June, 2024.*


(RASHIDA BANO)
Member (J)
Camp Court Swat


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat