

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT AT SWAT

Service Appeal No.936/2018

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

Mr. Janat Khan (Head Constable No. 317) R/O Village Shalbandi Tehsil Gagra
District Bunir.

.... (Appellant)

VERSUS

1. District Police Officer Swat.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.

.... (Respondents)

Mr. Shamsul Hadi
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....29.06.2018
Date of Hearing.....08.05.2024
Date of Decision.....08.05.2024

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:

“that on acceptance of this appeal, the impugned order dated 01.04.1997 dismissal from service of the appellant may kindly be set aside and the same may kindly be converted in to retirement on completion of age of superannuation and further the appellant may kindly be awarded with all back benefits of service including pension and gratuity.



2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Constable in Police Department in the year 1976 and was later on promoted to the rank of Head Constable. In the year 1995 a case FIR No.628 dated 17.08.1995 U/S 409/120-B PPC/5(2) P.C Act 1947 was lodged and on the basis of which disciplinary proceedings were initiated against him which resulted into major punishment of dismissal from service vide order dated 01.04.1997. Appellant filed departmental appeal which was not responded, hence the 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that the impugned order is against the law, facts, norms of justice, hence liable to be set aside; that appellant has not been treated in accordance with law and rules; that no chance of personal hearing was afforded to him as statement and evidence was recorded in absence of the appellant which shows the ill will of the respondents; that the penalty awarded to the appellant by an incompetent authority which is also against the rules/law.

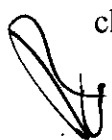
5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules; that besides departmental action, an FIR No. 628 dated 17.08.1995 U/S 409/120-B PPC/5(2) Prevention of Corruption Act, 1947, was also registered against him on the basis of involvement in corruption case and misappropriation of government property. He contended that during inquiry all the charges leveled against him were established for which no leniency was justified and the punishment of dismissal from service was awarded to him by the competent authority after fulfillment of all codal formalities.



6. Perusal of record reveals that appellant joined respondent department as constable in the year 1976 and was promoted as Head Constable. He was nominated in a criminal case bearing FIR No.628 registered under section 409/120B PPC 5/2 PC Act, 1947 at Police Station Mingora on the basis of which respondents vide order bearing No.53 dated 01.04.1997 dismissed him from service from date of his absence from duty due to his involvement in criminal case.

7. Although in the office order bearing OB No.53 dated 01.04.1997 it is mentioned that *"after perusal of inquiry file, finding of the inquiry officer and other connected record"* but respondent had not annexed with their reply/comments any charge sheet, statement of allegation, show cause notice or even the inquiry report from which it can be ascertained that in fact any inquiry as is alleged by the respondent had already been conducted and proper procedure provided in the rules had been followed/adopted. When departmental representative was asked to produce the inquiry record/file, he showed his inability to produce the same on the ground of being an old case.

8. In our humble view, this excuse of old case is not acceptable as criminal case against the appellant upon report of the department itself was pending adjudication in the court of competent jurisdiction and respondents were well aware of its pendency being complainant, then in such a situation they were duty bound to keep record in safe custody till completion of criminal trial as they are also in knowledge that under the rules and as per direction of supreme court, before acquittal approach to service tribunal for redressal of grievance of civil servant who is involved in a criminal case is a futile exercise. Non availability of inquiry file and record is suggestive/indicative of the fact that in fact no inquiry in accordance with rule was conducted by the respondents and appellant was deprived from due process of law and is discriminated by the respondent upon allegation of involvement of criminal charges from which later on he was acquitted by the competent court of law.



9. Legally speaking respondents were required to suspend the appellant after his involvement in the criminal case and wait for final decision of the competent court of law but they without adopting such-procedure as provided in the police rules 16, decided in haphazard manner the fate of departmental proceeding vide impugned order which is un-justice and against the rules. Police rules 1934 16(3) provided that;

"16.3. Action following on a judicial acquittal.-

(1) When a Police Officer has been tried and acquitted by a criminal Court he shall not be punished departmentally on the same charge or on a different charge based upon the evidence cited in the criminal case, whether actually led or not, unless:-

(a) The criminal charge has failed on technical grounds; or

(b) In the opinion of the Court or of the Superintendent of Police the prosecution witnesses have been won over; or

(c) The court has held in its judgment that an offence was actually committed and that suspicion rests upon the Police officer concerned; or

(d) The evidence cited in the criminal case discloses facts unconnected with the charge before the Court which justify departmental proceedings on a different charge; or

(e) Additional evidence admissible under Rule 16.25 (1) in departmental proceedings is available.

(2) Departmental proceedings admissible under sub-rule (1) may be instituted against lower subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of the Deputy Inspector-General of Police; and a police officer against whom such action is admissible shall not be deemed to have been honourably acquitted for the purpose of Rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I.

So, in the instant case the appellant was acquitted from the charges leveled against him in the criminal case and main reason to proceed against the appellant was his involvement in criminal case which is no more in field, hence respondents were required to re-instate the appellant.

10. Moreover in the impugned order the dismissal from service was ordered from the date of his absence but no date of absence is mentioned in it. As no charge sheet and statement of allegation is provided despite direction therefore it could not be determined what actually charge was and if absence was a charge then from which date. So far as question of limitation is concerned, in this respect it is held in PLD 2010 SC 695 citation;

“(h) S.4--Appeal---Limitation---Civil servant sought reinstatement in service, after he was acquitted from murder case---Service Tribunal allowed the appeal filed by civil servant and reinstated him in service---Plea raised by employer/bank was that appeal was barred by limitation---Validity---Civil servant was acquitted in criminal case on 22-9-1998 and he filed his departmental appeal on 12-10-1998, i.e. within three weeks of his acquittal in criminal case---It would have been a futile attempt on the part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case---It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case which had formed the foundation for his removal from service---Appeal before Service Tribunal was not barred by limitation.

11. In our humble view, appeal of the appellant is not barred by limitation as case was adjourned sine-die after which he filed his departmental appeal on 20.03.2018, when he was discharged by the criminal court of law, his criminal case was again started and he was acquitted from the charges leveled against him vide judgment dated 02.11.2023, the concluding para of the same is reproduced as under;

“Moreso, the statements of prosecution witnesses are not in line with each other rather there are many contradiction in the cross examination of these witnesses, due to which it can be clearly withheld that the prosecution has miserably failed to prove its case beyond any shadow of doubt and there is no probability of



conviction of accused, therefore accused Jannat Khan S/o Zareen Khan and Razi Khan S/o Rahim Dad Khan are acquitted from the case in hand, if not required in any other case. The accused are on bail. They and their sureties are discharged from the liabilities of the bail bonds."

So appellant is acquitted on merit and not on technical grounds.

12. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Conviction of the appellant in criminal case 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 his service.

13. It is established from the record that charges of his involvement in murder case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.


14. It is pertinent to mention here that appellant join the department in the year 1976 and served the department with unblemished record for about 21 years till his dismissal from service vide impugned order dated 01.04.1997 by respondent. Appellant through instant appeal seeks modification in impugned order of penalty from dismissal from service to compulsory retirement as appellant during pendency of criminal trial against him reached to the age of superannuation in the year 2017. This tribunal is vested with powers to vary and modify order of departmental authority. It is held in P.L.C 2011 C.S 808 citation;


*"---S. 3---Service Tribunals Act (LXX of 1973), S. 5---
Modifying of order---Compulsory retirement---Absence from duty--
Acquittal from criminal charge---Civil servant removed from service
on the allegation of his wilful absence from duty---Plea raised by*

civil servant was that his absence from duty was due to circumstances beyond his control as he had been involved in murder case---Validity---Service Tribunal while dealing with appeal, had power under S.5 of Service Tribunals Act, 1973, to vary and modify order of departmental authority---Supreme Court while sitting in appeal over judgment of Service Tribunal could also exercise such power to meet the ends of justice---Civil servant, who had long unblemished service record of about 17 years and he, by force of circumstances (involvement in case in which he was later on acquitted), was prevented from performing his duty---Civil servant was absent from duty entailing some penalty under law and his removal from service was too harsh penalty for him---Supreme Court converted petition for leave to appeal into appeal and converted penalty of removal from service into compulsory retirement---Appeal was allowed."

Appellant by force of circumstance i.e. his involvement in criminal case, the department itself prevented him from performance of his duties, when he was acquitted from the criminal case. Therefore, in the circumstance, now after attaining the age of superannuation, the only relief which could be given to the appellant as modifying his penalty of dismissal from service into compulsory retirement from the date of his attaining the age of superannuation in the year 2017. Costs shall follow the event. Consign.

15. *Pronounced in camp court at Swat and given under our hands and seal of the Tribunal on this 8th day May, 2024.*


(FAREEHA PAUL)
Member (E)
Camp Court Swat


(RASHIDA BANO)
Member (J)
Camp Court Swat

05th March, 2024

1. Appellant in person present. Mr. Muhammad Jan, District Attorney for the respondents present.
2. Appellant requested for adjournment on the ground that his counsel is busy in Peshawar High Court, Mingora Bench. Adjourned. To come up for arguments on 08.05.2024 before the D.B at Camp Court Swat. Parcha Peshi given to the parties.

SCANNED
KITT
Peshawar



(Salah ud-Din)
Member (J)
Camp Court Swat



(Kalim Arshad Khan)
Chairman
Camp Court Swat

Naeem Amin

ORDER

08.05.2024

1. Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Ali Rehman, Inspector for the respondents present.
2. Vide our detailed judgment of today placed on file, in the circumstance, now after attaining the age of superannuation, the only relief which could be given to the appellant as modifying his penalty of dismissal from service into compulsory retirement from the date of his attaining the age of superannuation in the year 2017. Costs shall follow the event. Consign.
3. *Pronounced in camp court at Swat and given under our hands and seal of the Tribunal on this 8th day May, 2024.*



(FAREEHA PAUL)
Member (E)
Camp Court Swat



(RASHIDA BANO)
Member (J)
Camp Court Swat

*M.KHAN