

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT PESHAWAR

Service Appeal No. 2274/2023

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

Kifayat Ullah (PASI) 179/P, Incharge PP Inqilab, PS Inqilab, Peshawar.

(Appellant)

VERSUS

1. The Capital Police Office (CCPO) Peshawar.
2. The Senior Superintendent of Police (Operations), Peshawar.
3. The Superintendent of Police Saddar Division, Peshawar.

(Respondents)

Mr. Muhammad Asif Yousafzai
Advocate

For appellant

Mr. Muhammad Jan
District Attorney

For respondents

Date of Institution.....01.11.2023
Date of Hearing.....15.05.2024
Date of Decision.....15.05.2024

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:

“On acceptance of this service appeal, the impugned order dated 16.06.2023 and 10.10.2023 may kindly be set-aside and



the appellant may be reinstated into service with all back and consequential benefits. Any other remedy which this August Tribunal deems fit and appropriate that, may also be awarded in favour of appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as PASI in Police Department and was performing his duty up to the entire satisfaction of his superiors. The appellant was suspended vide dated 13.02.2023 on the allegation of misusing of official authority. Charge sheet alongwith statement of allegation was served upon the appellant which was replied by negating the allegation. Thereafter, final show cause notice was served upon the appellant which he also replied. Finally, major penalty of dismissal from service was imposed upon the appellant vide impugned order dated 16.06.2023. Feeling aggrieved, appellant filed departmental appeal on 26.06.2023, which was rejected on 10.10.2023, 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 the appellant argued that appellant has not been treated in accordance with law and rules; that the impugned order passed by the respondents is against the law, facts, and norms of justice, hence liable to be set aside; that no opportunity of personal hearing and cross examination was afforded to the appellant and he was condemned unheard; that neither the



appellant was associated with the inquiry proceedings nor any statement of witnesses has been recorded in the presence of the appellant. He requested that instant appeal might be accepted.

5. Conversely, learned District Attorney contended that appellant it is the primary duty of the police force to uphold law and order, safeguard the lives and properties of the citizen but he engaged himself in the fabrication of false criminal cases against the innocent citizens. Such an accusations raise serious concern about the appellant integrity, professionalism and adherence to legal and ethical standards in the performance of their duties on the basis of which disciplinary proceedings was initiated against him and after fulfillment of all codal formalities he was rightly dismissed from service. He further argued that proper opportunity of personal hearing was afforded to him but he failed to substantiate his innocence.

6. Perusal of record reveals that appellant was serving as incharge of Police post Inqilab, Peshawar when he was placed under suspension vide order dated 13.02.2023. Appellant was served charge sheet on the allegation of misusing of official authority as he was alleged to have committed the following acts/omission.

i) On 10.2.2023 at about 2130 hrs, it was informed by PASI Kifayat Ullah No.179/P I/C PP Inqilab that there are hand grenades with two persons in Islamic Health Circle at Bazid Khel who are resisting to hand over to the local police. On the tip of the information, the SP Saddar alongwith SHO Inqilab rushed to the spot where the two persons while custody of PASI Kifayat were identified as Manzoor Ahmad S/o Ali



Ahmad and Mazhar Ahmed S/o Sultan Muhammad who disclosed themselves as employees in the said clinic, whereas the hand grenades in a shopping bag were found on the table at clinic. PASI Kifayat stated that these hand grenades have been found in a bathroom of the said clinic as per of respondent party. PASI Kifayat was informed that this is disputed clinic but nevertheless he was adamant to lodge FIR against them without confirmation/verification which clearly shows the PASI Kifayat Ullah Incharge PP Inqilab was favoring the respondent party of above mentioned disputed clinic for ulterior intention or monetary benefits. Complainant Muhammad Suleman Sabir, owner of the disputed clinic preferred a complaint that they have dispute over the said clinic and PASI Kifayat Ullah I/C PP Inqilab is favoring his respondents namely Masood, Daud, Himayatullah, hence he made this false and baseless game to implicate them in a bogus case.

Inquiry Officer submitted his report on 2.03.2023 after concluding the inquiry, whereafter, final show cause notice was issued & vide impugned order dated 16.06.2023 appellant was dismissed from service.

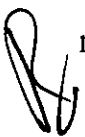
7. Perusal of inquiry report reveals that inquiry officer recorded statements of Muhammad Ali SDP Saddar, SI Masood SHO Police Station Inqilab, SI Wajid Khan Investigation Officer Police Station Inqilab and statement of complainant Muhammad Sulaiman Sabir but neither their statements were recorded in the presence of the appellant nor appellant was provided opportunity of cross examination upon them, which is violation of settled rules on the subject as cross examination is the most important and



essential element of the fair trial, when statement of witness was not subjected to cross examination, its evidentiary value cannot be equated.

8. It is an onerous duty of the Inquiry officer or Inquiry Committee to explore every avenue so that the inquiry may be conducted in a fair and impartial manner and should avoid razing and annihilating the principle of natural justice which may ensue in the miscarriage of justice. Not providing an ample opportunity of defence and depriving the accused officer from his right of cross-examining departmental representative who led evidence and produced documents against the accused is also against the right to a fair trial enshrined in Article 10-A of the Constitution.


9. 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 partum 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.

10. For what has been discussed above, the impugned orders are set aside and the appellant is reinstated into service for the purpose of de-novo inquiry with direction to provide ample opportunity of cross examination and self defence. Respondents are directed to conclude de-novo inquiry within 90 days from the date of receipt of this order. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15th day of May, 2024.*


(Farveha Paul)
Member (E)


(Rashida Bano)
Member (J)

ORDER


15.05.2024


1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to accept the appeal, reinstate appellant for the purpose of de-novo inquiry with direction to provide ample opportunity of cross examination and self defence. Respondents are directed to conclude de-novo inquiry within 90 days from the date of receipt of this order. 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 15th day of May, 2024.*


(Faraha Paul)
Member (E)


(Rashida Bano)
Member (J)