



27.06.2024 1. Learned counsel for the applicant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Arguments on application heard. Through the instant application, the applicant is seeking correction in the judgment, which was decided on 15.02.2024. Record transpired that the concerned Service Appeal bearing No. 625/2022 titled "Zia Ur Rehman Vs. Police Department" was decided on 15.02.2024. Due to clerical mistake in the memo of appeal, the date of submission of reply of the appellant in the DPO Office was written as 03.01.2021 instead of 03.01.2022. In the said date, day and month are correct, however, year has erroneously been mentioned as 2021. Said application under Section-152 for correction of date in appeal due to which wrong date was also mentioned in the judgment, which was decided on 15.02.2024. This Tribunal, within the meaning of Sub-Section 2 of Section-7 of Khyber Pakhtunkhwa Service Tribunal Act, 1974, is deemed as civil court under the Code of Civil Procedure, 1908. Section-152 C.P.C provides for amendment of the judgment, decree or errors and even in the appeal, arising therein from any accidental slip or omission, that may, at any time, be corrected by the court either of its own motion or on the application of any of the parties. In the present case, the remaining order is correct but the date of submission of reply of the appellant in the DPO Office was written as 03.01.2021 instead of 03.01.2022, as a typographical mistake, which is an accidental slip. Therefore, office is directed to make necessary correction in the order dated 15.02.2024 and memo of appeal with red ink accordingly. This order, alongwith application of the applicant seeking said correction, be placed on file of Service Appeal No. 625/2022 and judgment after correction be again scanned. Consign.


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 625/2022

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

Zia-ur-Rehman, Ex-Constable Police Lines Nowshera.
..... (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa.
 2. The Regional Police Officer Mardan, Khyber Pakhtunkhwa.
 3. The District Police Officer, Nowshera.
-(Respondents)

Mr. Yasir Salim, ... For appellant
Advocate

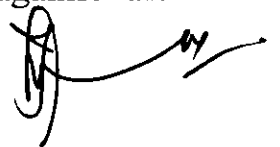
Mr. Asif Masood Ali Shah, ... For respondents
Deputy District Attorney

Date of Institution.....	26.04.2022
Date of Hearing.....	15.02.2024
Date of Decision.....	15.02.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant service appeal as well as connected service appeal No. 626/2022, titled "Muhammad Abbas Versus the Provincial Police Officer, Khyber Pakhtunkhwa etc." and Service Appeal No. 627/2022, titled "Muhammad Abid Versus Provincial Police Officer, Khyber Pakhtunkhwa etc.", as in all the appeals, common questions of law and facts are involved.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the



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impugned order dated 29.12.2021, whereby the appellant was awarded major punishment of dismissal from service, against which his departmental appeal dated 10.01.2022 was regretted vide office order dated 30.03.2022. It has been prayed that on acceptance of the appeal, the impugned orders dated 29.12.2021 and 30.03.2022 might be set aside and the appellant might be reinstated into service with all back benefits.

3. Brief facts of the case, as given in the memorandum of appeal, are that various posts of Police Constable BPS- 07 were advertised seeking applications from candidates. The appellant, having qualification of intermediate, duly applied for the post through online application and roll number was issued to him. He appeared in the test and qualified the test and physical test also. He was appointed by the competent authority on the recommendations of Departmental Selection Committee. After appointment, he took over the charge of his post and started performing his duties. While performing his duties, on some anonymous complaint having allegations against him, a fact finding inquiry was conducted vide letter dated 10.12.2021. The appellant appeared before the Inquiry Officer (I.O) and denied all the allegations, however, the I.O submitted his report vide letter dated 24.12.2021 and held the appellant guilty of all charges. One, Khalilullah, owner of Shaheen Printing Press, also appeared and recorded his statement before the I.O. Without issuing any charge sheet and without conducting regular inquiry, the appellant was issued final show cause notice on 28.12.2021 giving him 07 days to



submit his reply. On 03.01.²⁰²²(2021), when he went to the office of DPO Nowshera to submit his reply to the show cause notice, he was informed that he had already been dismissed from service vide order dated 29.12.2021. Feeling aggrieved, he filed departmental appeal on 10.01.2022, which was regretted vide office order dated 30.03.2022; hence the instant service appeal.

4. Respondents were put on notice who submitted their joint written reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant, after presenting the case in detail, argued that no proper procedure was followed before the dismissal order dated 28.12.2021 was issued. He stated that no charge sheet was served upon him nor any regular inquiry was conducted rather only a fact finding inquiry was conducted and that too in a biased manner. He further argued that without waiting for reply to show cause notice, the appellant was awarded major penalty of dismissal from service vide order dated 29.12.2021. Learned counsel further argued that the appellant was not provided fair opportunity to defend himself nor opportunity of personal hearing was afforded to him and hence he was condemned unheard. He further argued that inquiry officer had admitted in his report that the appellant, alongwith other dismissed candidates, himself appeared for the examination. During the fact finding inquiry, it



was never proved that the paper of the appellant was actually filled by one Sifatullah or that he helped the appellant in solving the paper. So far as putting wrong entry of date of birth in application form was concerned, learned counsel for the appellant argued that it was not filled by the appellant himself, rather it was filled by a person sitting in Shaheen Computers Kheshgi Payan who mistakenly and unintentionally put wrong entry and the same had been stated by the I.O in his report also. Learned counsel stated that after noticing his mistake, the appellant himself brought it into the notice of ETEA administration upon which it was replied that it was not a big issue and could be rectified at the time of verification of documents. He requested that the appeal might be accepted as prayed for.

6. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that a complaint was received to the then District Police Officer, Nowshera, wherein it was highlighted that a person namely Sifat Ullah S/O Farzand Ali R/O Kheshgi Bala, a school teacher, appeared for other candidates in ETEA test held for recruitment of Police Constables. Complaint further stated that Zia-ur-Rehman, Muhammad Abbas and Muhammad Abid sons of Inam Ali got their test passed through the said Sifat Ullah, who received Rs. 600,000/- from each candidate. A fact finding enquiry was conducted wherein the enquiry officer highlighted that according to ETEA report, the appellant, as well as his two brothers and one person namely Sifatullah, while submitting online application forms mentioned



their date of birth as 01.01.1998 and ETEA authorities allotted them roll numbers according to their dates of birth. When they were asked about their similar date of birth, they replied that they had not applied themselves rather their application forms were submitted by a person namely Khalil, owner of Shaheen Computer Kheshgi Payan, who in his statement disclosed that it was a human mistake. He further argued that the enquiry officer collected all relevant material from the ETEA authorities and recommended major punishment for the appellant. He was issued final show cause notice to which he submitted his reply on 29.12.2021 but the same was found unsatisfactory, hence he was awarded major punishment of dismissal from service. He requested that the appeal might be dismissed.

7. Arguments and record presented before us shows that the appellants, who are brothers, were awarded major punishment of dismissal from service on the ground of using fraudulent means to pass their test arranged by ETEA for appointment as Constable in the provincial police. A fact finding inquiry was conducted after receipt of an anonymous complaint wherein it was highlighted that one Sifatullah, a school teacher, appeared for some candidates, in ETEA test. Names of the appellant Ziaur Rehman, Muhammad Abbas and Muhammad Abid, had been mentioned by the complainant for whom Sifatullah appeared and solved their test papers by receiving rupees six lacs each from them. During the inquiry, it was revealed that date of birth of all the three appellants, as well as Sifatullah, was the same and they were provided



roll numbers in series, based on that date. However, during the inquiry, it was clarified that the online forms were not filled by the appellants, rather a computer operator filled them and put the wrong information unintentionally. Inquiry Report further states that all the three appellants appeared in the examination physically, as verified through the video clip provided by ETEA.

8. If we look at the procedure adopted by the Inquiry Officer in conducting the inquiry, it is found that he simply got the statements of the appellants, Sifatullah and the Computer Operator who filled the online application forms. After getting their statements, he arrived at a conclusion according to his own wisdom. He failed to take into consideration the statement of the complainant of the anonymous complaint that he had all the evidence which he was ready to share with the DPO Nowshera. No effort seems to be made by the Inquiry Officer in getting to know the complainant and the evidence that he had to present, in support of the allegations he was leveling against the appellants.

9. After going through the details of the appeal in hand, it has been noted that the entire proceedings were initiated on the basis of an anonymous complaint without trying to get any information about the complainant and documentary evidence to prove the allegations. In this regard the provincial government has issued clear instructions that anonymous complaints should not be entertained. Moreover, there is no denial of the fact that the appellants appeared in the written test, in



person, and got it passed. They also passed the physical test and were resultantly recommended for appointment. As far as order of dismissal is concerned, despite the fact that seven days were given for reply to the final show cause notice, the competent authority passed the order of dismissal in a hasty manner, on the very next day of issuance of the notice, which is against the rules. They had to wait for the reply, which was submitted on the seventh day of the receipt of the show cause notice.

10. In view of the above discussion, instant appeal, alongwith the connected appeals, is allowed as prayed for. Cost shall follow the event. Consign.

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


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

Fazle Subhan, P.S