

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6856/2021

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

Asif Iqbal, Ex-Constable, Belt No. 571, R/O Nusrat Abad PS. YKS, Takhte
Nasrati, District Karak.

.... (Appellant)

VERSUS

1. Inspector General of Police of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Kohat
3. District Police Officer, Kohat.

.... (Respondents)

Mr. Javid Iqbal Gulbella
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....08.07.2021
Date of Hearing.....23.05.2024
Date of Decision.....23.05.2024

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 the instant service appeal, the
impugned order dated 14.04.2021 of the office of the



District Police Officer Karak, whereby the appellant was dismissed from service and the impugned office order dated 25.06.2021 of the Regional Police Officer Kohat Region, whereby the departmental appeal of the appellant was turned down, may very graciously be set aside and by doing so the appellant may very graciously be reinstated into service with all back benefits. Any other relief not specifically asked for may also be graciously be extended in favor of the appellant in the circumstances of the case.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Constable in Police Department and was performing his duty upto the entire satisfaction of his superiors. He while posted as computer operator at traffic branch Karak was suspended vide order OB No. 511 on the allegation of taking illegal and extra charges from the general public in connection with preparation of driving license. Charge sheet alongwith statement of allegation was issued to the appellant. Finally, major penalty of dismissal from service was imposed upon the appellant vide impugned order dated 14.04.2021. Feeling aggrieved, he filed departmental appeal on 03.05.2021, which was turned down on 25.06.2021, 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 and respondents violated Article 4



&25 of the Constitution of Islamic Republic of Pakistan,1974; that the impugned order passed by the respondents is against the law, facts, and norms of justice, hence liable to be set aside; that neither show cause notice nor final show notice was issued to him which is mandatory before imposition of major penalty; that no opportunity of personal hearing and cross examination was afforded to the appellant and he was condemned unheard; that appellant was discriminated as his other colleagues were penalized with minor penalties in the same departmental proceedings and he was penalized with the major penalty. He requested that instant appeal might be accepted.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant alongwith others indulged themselves in taking illegal gratification and taking extra charges from public in traffic challans. Therefore, they were proceeded against departmentally and after fulfillment of all codal formalities the appellant was found guilty of misconduct and was awarded major penalty of dismissal from service. He requested that instant appeal might be dismissed.

6. Perusal of record reveals that appellant was inducted in respondent department as constable, was posted at Traffic branch of DPO Office, Karak as Key Punch Operator in License Branch when he alongwith other was suspended upon allegation of receiving more amount in the head of License fee than due for issuing license. Charge sheet alongwith statement of allegation was issued with the following allegations:

- i. *Indulging himself in mal-practices in issuance of driving licenses.*



ii. Taking extra charges from the general public in connection with preparation of driving licenses.

iii. Violative the relevant rules laid down for issuance of driving licenses.

SDPO, B.D Shah, Karak was appointed as inquiry office who after completion of codal formalities submitted his report. Authority after giving inquiry report vide impugned order dated dismissed the appellant from service.

7. Perusal of inquiry report reveals that inquiry officer ordered statement of Tasbeeh Ullah S/O Muhammad Younas, Shah Fayaz S/O Ayaz Muhmmad, Naqeeb Ullah S/O Peewa Khan, Salim Jamal S/O Shahid Jamal, Sabir Gul S/O Zahoor Gul, Shahid Nawaz S/O Gul Rehman, Zewar Khan S/O Mushahid Khan, Yasir Shehzad S/O Suleman Gul, Rehman Ullah S/O Moeen Ullah, Muhammad Faizan Khan. Enquiry report further reveals that these statements were neither recorded in presence of appellant nor any opportunity of cross examination upon all of them was provided to the appellant which is the foremost requirements/prerequisite of fair trial. Appellant was awarded major penalty of dismissal from service without providing opportunity of self defence and cross examination which means appellant was condemned unheard.

8. 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 the absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of *audi-alter-ampartem* 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.

9. For what has been discussed above, we are unison to accept the appeal and reinstate the appellant for the purpose of de-novo inquiry with direction to provide proper chance of cross examination to the appellant. Respondents are further directed to conclude the inquiry within 60 days after receipt of copy of judgment. The issue of back benefits shall be decided subject to the outcome of de-novo inquiry. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal of this 23rd day of May, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDABANO)
Member (J)

ORDER

- 23.05.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Malak Jan, Inspector (Legal) for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to accept the appeal and reinstate the appellant for the purpose of de-novo inquiry with direction to provide proper chance of cross examination to the appellant. Respondents are further directed to conclude the inquiry within 60 days after receipt of copy of judgment. The issue of back benefits shall be decided subject to the outcome of de-novo inquiry. Cost shall follow the event. Consign. 2
3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal of this 23rd day of May, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDABANO)
Member (J)

*M.Khan