

Service Appeal No.2547/20233 titled "Ali Rehman Versus The Superintendent of Police HQs, Peshawar and others", Service Appeal No. 105/2024 titled "Safi-ur-Rehman The Superintendent of Police HQs, Peshawar and others" and Service Appeal No. 106/2024 titled "Imran Khan The Superintendent of Police HQs, Peshawar and others" decided on 12.07.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

BEFORE: **AURANGZEB KHATTAK ..MEMBER (Judicial)**  
**MUHAMMAD AKBAR KHAN..MEMBER (Executive)**

**Service Appeal No. 2547/2023**

Date of presentation of Appeal.....08.12.2023  
Date of Hearing.....09.07.2024  
Date of Decision.....12.07.2024

**Ali Rehman (Ex-Constable No. 793) Village Sarkhana, P.O Shaghlai Bala, Tehsil & District Peshawar.-----Appellant**

Versus

1. The Superintendent of Police HQs, Peshawar.
2. The Capital City Police Officer, Peshawar.
3. The Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar.-----(**Respondents**)

Present:

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

**Service Appeal No. 105/2024**

Date of presentation of Appeal.....10.01.2024  
Date of Hearing.....09.07.2024  
Date of Decision.....12.07.2024

**Safi-ur-Rehman (Ex-Constable No. 2262 Police Lines, Peshawar) Mohalla Saidaan, Garhi Sherdad, P.O, Sherdad, Tehsil & District Peshawar.-----Appellant**

Versus

1. The Superintendent of Police HQs, Peshawar.
2. The Capital City Police Officer, Peshawar.
3. The Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar.-----(**Respondents**)

Present:

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

**Service Appeal No. 106/2024**

Date of presentation of Appeal.....10.01.2024

12/07/2024

Service Appeal No.2547/20233 titled "Ali Rehman Versus The Superintendent of Police HQs, Peshawar and others". Service Appeal No. 105/2024 titled "Safi-ur-Rehman The Superintendent of Police HQs, Peshawar and others" and Service Appeal No. 106/2024 titled "Imran Khan The Superintendent of Police HQs, Peshawar and others" decided on 12.07.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Date of Hearing.....09.07.2024

Date of Decision.....12.07.2024

**Imran Khan** (Ex-IHC No. 866 Police Lines, Peshawar) R/o Mohalla Shaheed Baba Village Sabi Post Office Budhni, Tehsil & District Peshawar.-----**Appellant**

Versus

1. The Superintendent of Police HQs, Peshawar.
2. The Capital City Police Officer, Peshawar.
3. The Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar.-----**(Respondents)**

Present:

Mr. Rizwanullah, Advocate .....For appellant

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

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**CONSOLIDATED JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** Through this single judgment, we intend to dispose of all the three above-mentioned service appeals, as common questions of law and facts are involved in all the three appeals.

2. The appellants namely, Ali Rehman, Safi-ur-Rehman and Imran Khan, were deputed for production of three under-trial prisoners namely, Gul Raiz s/o Zar Khan, Yasin s/o Ali Akbar, and Qamar Aziz s/o Abdul Aziz, from Central Jail Peshawar to Police and Services Hospital, Peshawar, for medical treatment. Upon reaching the Central Jail, Peshawar, the said prisoners were handed over to the appellants without a prison van due to its alleged preoccupation with other cases. Consequently, a taxi was used for transport and while coming back from Hospital at U-turn at Hashtnagri, accused namely Qamar Aziz managed to escape. Subsequently, case FIR No. 879 dated 02-08-2023 under Sections 223/224 PPC Ps SGH 118 Police

*Aurangzeb Khattak*  
12/07/2024

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Act was registered against the appellants, leading to their arrest in the case. Disciplinary proceedings ensued, resulting in the dismissal of the appellants vide impugned separate orders dated 20-09-2023. The appellants challenged the impugned order dated 20-09-2023 through filing of separate departmental appeals, however the same were dismissed vide impugned orders dated 01-11-2023 and 06.12.2023 respectively. There-after, the appellant filed separate revision petitions, which were not responded within the statutory period, hence they have now approached this Tribunal through filing of above-mentioned appeals for redressal of their grievances.

3. The respondents were summoned, who contested all the three appeals by way of filing their respective written replies/comments.

4. Arguments have already been heard and case files perused.

5. The learned counsel for the appellants contended that the appellants were not treated according to Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, which ensures protection under law and due process for every citizen, therefore, the impugned orders remain unsustainable legally. He next contended that the inquiry was not conducted in a proper manner as per legal standards as the appellants were not provided the opportunity to cross-examine witnesses or present their defense, violating Article 10-A of the Constitution, which guarantees fair trial rights. He further contended that the inquiry process was flawed and relied on conjectures, lacking concrete evidence against the appellants. He also contended that the competent authority failed to consider whether the appellants had the

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necessary intent (mens rea) to commit any alleged misconduct or not, by ignoring crucial aspects of appellant's replies were unjust, thus invalidating the dismissal orders. He next argued that it was the duty of the appellate authority to independently review the merits of the cases and identify procedural errors in the inquiry and competently address those but they failed to do so renders the impugned dismissal orders of the appellants unjust. He further argued that the appellants have been discharged of the criminal charges by the competent court of law due to no direct evidence of negligence nullifies any remaining grounds for the appellants dismissal. He also argued that the copy of inquiry report was not provided to the appellants, thus preventing fair opportunity for rebuttal, referencing PLD 1981 SC 176 and 1987 SCMR 1776. In the last he requested that the impugned orders may be set-aside and all the three appellants may be reinstated in service with all back benefits.

6. On the other hand, learned Deputy District Attorney opposed the contention of learned counsel for the appellants and contended that the service records of the appellants were not exemplary and that the bad entries recorded in their service record indicated a pattern of behavior inconsistent with the standards expected of a police official. He next contended that the appellants deviated significantly from the prescribed procedures by using private transportation instead of official vehicles, which jeopardized the security of the accused and undermined the integrity of police duties. He further contended that the decision of the appellants to transport the accused on foot and later

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by private taxi, instead of arranging for a proper prison van, was a clear neglect of duty and thus they facilitated the escape of the accused namely Qamar Aziz. He also contended that the inquiry was conducted fairly and in accordance with the rules and the appellants were given full opportunities to present their defense but they failed and the charges were proved against them in the inquiry proceeding. He next argued that the appellants have facilitated the escape of an accused involved in heinous crimes, therefore, they were rightly dismissed from service. In the last he argued, that all the legal and codal formalities were fulfilled before passing the impugned orders, therefore, all the above-mentioned three service appeals may be dismissed with costs.

7. The perusal of the record reveal that the appellants were ordered by their Incharge to escort/shift three under-trial prisoners namely Gul Raiz s/o Zar Khan, Yasin s/o Ali Akbar, and Qamar Aziz s/o Abdul Aziz from Central Jail Peshawar to the Police and Services Hospital, Peshawar, for medical treatment, however without arrangement of any official vehicle. On August 2, 2023, upon receiving custody of the prisoners, the appellants used taxi/rickshaw for shifting of the accused. One of the prisoner namely Qamar Aziz managed to escape while returning from Hospital at a U-turn at Hashtnagri. Despite efforts to apprehend him he evaded capture. Following the event, case FIR No. 879 dated 02-08-2023 under sections 223/224 PPC 118 Police Act was registered against the appellants, leading to their subsequent arrest in the criminal case. The

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appellants faced disciplinary proceedings, received a charge sheet, and responded with a detailed defense, denying all allegations. However, the inquiry officer, Tauheed Khan, found the appellants guilty and recommended dismissal from service, which was implemented on September 20, 2023. The appellants filed separate departmental appeals, which were dismissed and there-after they also filed separate revision petition, however, the same were not responded. The record further reveals that the appellants were not handled as per their constitutional rights established under Articles 4 and 10-A of the Constitution of Islamic Republic of Pakistan. The procedural shortcomings in ensuring defense and fair trial rights are evident and warrant rectification. The inquiry so conducted by the respondents against the appellants did not meet lawful standards, denying the appellants essential procedural rights like cross-examination and defense presentation, making the proceedings fundamentally flawed. Furthermore, ignoring the intent behind the actions of the appellants, the competent authority imposed punishment disproportionate to actual culpability, if any, making the penalty legally unsustainable. Moreover, discharge of the appellants in a criminal court for lack of evidence emphasizes the absence of proven negligence or misconduct, nullifying the grounds for the departmental penalty. Denying the appellants access to adverse findings for rebuttal breaches legal requirements, impacting the fairness of the disciplinary process, therefore, de-novo inquiry is must to dig out all the facts and circumstances of the case.

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8. In view of the above discussion, the disciplinary proceedings against appellants result in procedural, substantive, and constitutional violations. Therefore, the impugned orders are set aside and all the above-mentioned three appellants are reinstated in service with the directions to the competent Authority to conduct de-novo inquiry strictly in accordance with the relevant law/rules within a period of 90 days of receipt of copy of this judgment. Needless to mention that the appellants shall be fully associated with the inquiry proceedings and fair opportunity including opportunity of cross-examination be provided to them to defend themselves. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12 day of July, 2024.*

  
**AURANGZEB KHATTAK**  
Member (Judicial)


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2024

  
**MUHAMMAD AKBAR KHAN**  
Member (Executive)

**ORDER**

12<sup>th</sup> July, 2024

1. Appellant alongwith his counsel present. Mr. Riaz Ahmad Paindakhel, Additional Advocate General for the respondents present. Arguments have already been heard and record perused.
2. Vide our consolidated judgment of today placed on file, the disciplinary proceedings against appellants result in procedural, substantive, and constitutional violations. Therefore, the impugned orders are set aside and the appellant in the instant appeal as well as appellant namely Saif-ur-Rehman in Service Appeal No. 105/2024 and appellant namely Imran Khan in Service Appeal No. 106/2024, are reinstated in service with the directions to the competent Authority to conduct de-novo inquiry strictly in accordance with the relevant law/rules within a period of 90 days of receipt of copy of this judgment. Needless to mention that the appellants shall be fully associated with the inquiry proceedings and fair opportunity including opportunity of cross-examination be provided to them to defend themselves. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12 day of July, 2024.*

  
(Muhammad Akbar Khan)  
Member (Executive)

  
(Aurangzeb Khattak) 12<sup>th</sup> 07  
Member (Judicial) 2024.