

Service Appeal No.2427/2023 titled "Raqeeb Versus Commandant Elite Force Khyber Pakhtunkhwa Peshawar and others" and Service Appeal No. 2428/2023 titled "Hayat Ullah Versus Commandant Elite Force Khyber Pakhtunkhwa 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. 2427/2023**

Date of presentation of Appeal.....17.11.2023  
Date of Hearing.....09.07.2024  
Date of Decision.....12.07.2024

**Raqeeb S/o Siraf Khan Ex-Constable No. 3466, R/o Elite Platoon  
No. 20 District Charsadda .....Appellant**

Versus

1. Commandant Elite Force Khyber Pakhtunkhwa Peshawar.
2. Superintendent of Police Elite Force RRF Mardan Region.
3. Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar.  
.....(Respondents)

Present:

Mr. Kabir Ullah Khattak, Advocate.....For appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

**Service Appeal No. 2428/2023**

Date of presentation of Appeal.....17.11.2023  
Date of Hearing.....09.07.2024  
Date of Decision.....12.07.2024

**Hayat Ullah S/o Niamat Ex-Constable No. 1562, R/o Elite Platoon  
No. 20 District Charsadda .....Appellant**

Versus

1. Commandant Elite Force Khyber Pakhtunkhwa Peshawar.
2. Superintendent of Police Elite Force RRF Mardan Region.
3. Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar.  
.....(Respondents)

Present:

Mr. Kabir Ullah Khattak, Advocate.....For appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

**CONSOLIDATED JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** This single judgment is directed to dispose of both the above-mentioned service appeals, as common questions of law and facts are involved in both the appeals.

2. The appellants, Mr. Raqeeb S/o Siraf Khan and Hayat Ullah S/o Niamat, were appointed as Constables on 11.04.2011 & 01.03.2011 respectively in the respondent-department and subsequently transferred to the Elite Force on 01.07.2013 & 13.11.2017 respectively. Disciplinary proceedings were initiated against them on the allegations of their involvement in criminal case vide FIR No. 388 registered against them on 09.06.2022 under sections 395, 337-A(1), 412, 397 PPC at P.S Shehzad Town, Islamabad. On conclusion of the inquiry, both the appellants were found guilty and major penalty of dismissal from service was imposed upon them vide separate impugned orders dated 20.03.2023. Feeling aggrieved, they filed separate departmental appeals on 27.03.2023, which remained un-responded, hence they filed the instant appeals before this Tribunal for redressal of their grievances.

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

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

5. The learned counsel for the appellants contended that both the appellants were dismissed from service without following the due process of law. He next contended that no charge sheet was issued to the appellants, no statement of allegations was made, no regular inquiry was conducted and no statement of witnesses was recorded. He further contended that the appellants were not given any opportunity to defend themselves as no regular inquiry was conducted in the matter. He also contended that the appellants were denied the chance to cross-examine any witnesses or present their side of the story. He next argued that as per procedural rules, the authority should have placed the appellants under suspension till the final

*Amir C  
12/07/2024*

*Service Appeal No.2427 2023 titled "Raqqeb Versus Commandant Elite Force Khyber Pakhtunkhwa Peshawar and others" and Service Appeal No. 2428 2023 titled "Usaid Urah Versus Commandant Elite Force Khyber Pakhtunkhwa Peshawar and others" decided on 12.0.2024 by Division Bench comprising of Mr. Aurangzeb Khanak Member Judicial and Mr. Muhammad Akber Khan Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar*

outcome of the criminal case but the respondents dismissed both the appellants without waiting for the outcome of the criminal case. He further argued that the appellants were acquitted by the criminal court, which should have a bearing on their dismissal from service, indicating that they were not guilty of the charges, therefore, the very ground on the basis of which they were dismissed from service has been vanished away. In the last he argued, that both the appellants may be reinstated in service with all back benefits.

6. Conversely, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellants and contended that the appellants were involved in criminal case, therefore, disciplinary action was taken against them and all legal and codal formalities were complied with during the inquiry proceedings. He next contended that departmental and criminal proceedings are distinct in nature and can run parallel, therefore, mere acquittal of the appellants in criminal case could not entitle them for exoneration in the departmental proceedings. He further contended that the allegations against the appellants stood proved in inquiry, therefore, they have rightly been dismissed from service.

7. The perusal of the record reveals that both the appellants were charged in criminal case registered against them vide FIR No. 388 dated 09.06.2022 under sections 395, 337-A(1), 412, 397 PPC at P.S Shehzad Town, Islamabad and they were placed under suspension vide office order dated 22.08.2022. The record further reveals that both the appellants were granted bail on 21.01.2023 by the concerned court of law but the competent authority without waiting the final decision of the criminal case, dismissed both the appellants from service vide separate impugned orders dated 20.03.2023. In situations, where criminal proceedings are in progress,

*12/07/2024*

standard procedure generally dictates that the employee should be placed under suspension until the resolution of the case. This ensures both the integrity of the inquiry and the fair treatment of the employee. The authority's decision to dismiss the appellants before the final decision of the criminal case indicates a premature action and lack of adherence to due process. Furthermore, no charge sheet or statement of allegations was issued to the appellants before their dismissal. Additionally, no regular inquiry was conducted, which was mandatory before imposing major penalty upon the civil servant. This constitutes a breach of the principles of natural justice, which necessitate that any person accused of misconduct is given a fair opportunity to respond to the accusations and defend themselves. Issuing a charge sheet and conducting regular inquiry are essential steps to ensure transparency and fairness in any disciplinary action. By not issuing a charge sheet, not providing a statement of allegations, and not conducting regular inquiry, the authority failed to follow the due process of law. The right to be heard is a fundamental principle, and overlooking this aspect significantly undermines the legitimacy of the dismissal. Fair trial is the right of every citizen which cannot be denied in any way but in the instant cases, regular inquiry has not been conducted. In these circumstances, we deem it appropriate to remit the matter back to the competent Authority for conducting de-novo inquiry in accordance with relevant law and rules.


8. As a sequel of the above, both the above mentioned service appeals are allowed, the impugned order dated 20.03.2023 are set-aside and the appellants are reinstated in service with the direction to the respondents to conduct de-novo inquiry against the appellants. The de-novo inquiry shall be completed within a period of three months of receipt of copy of this


12/07/2024  
A. Khattak

Service Appeal No.2427/2023 titled "Raqeeb Versus Commandant Elite Force Khyber Pakhtunkhwa Peshawar and others" and Service Appeal No. 2428/2023 titled "Hayat Ullah Versus Commandant Elite Force Khyber Pakhtunkhwa 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.

judgment, strictly in accordance with relevant law/rules. Needless to mention that the appellants shall be fully associated with the inquiry proceedings by providing them fair opportunity to cross-examine the witnesses as well as to produce evidence in their defence. 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)

  
**MUHAMMAD AKBAR KHAN**  
Member (Executive)

\*Naeem Amin\*


**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 appeal in hand as well as Service Appeal No. 2428/2023 titled "*Hayat Ullah Versus Commandant Elite Force Khyber Pakhtunkhwa Peshawar*" are allowed, the impugned order dated 20.03.2023 are set-aside and the appellants are reinstated in service with the direction to the respondents to conduct de-novo inquiry against the appellants. The de-novo inquiry shall be completed within a period of three months of receipt of copy of this judgment, strictly in accordance with relevant law/rules. Needless to mention that the appellants shall be fully associated with the inquiry proceedings by providing them fair opportunity to cross-examine the witnesses as well as to produce evidence in their defence. 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)  
Member (Judicial) 12 07  
2024