

Service Appeal No. 1870/2023 titled "Rafiq versus The Inspector General of Police, Khyber Pakhtunkhwa Peshawar and others" and Service Appeal No. 1871/2023 titled "Tanzeem Ullah versus The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and others" decided on 10.07.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Mrs. Rashida Bano Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **AURANGZEB KHATTAK** ... **MEMBER (Judicial)**
RASHIDA BANO ... **MEMBER (Judicial)**

Service Appeal No. 1870/2023

Date of presentation of Appeal.....15.09.2023
Date of Hearing.....10.07.2024
Date of Decision.....10.07.2024

Rafiq, Ex-Constable No. 2881, District Police, District Mohmand.
.....**Appellant**

Versus

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan Region at Mardan.
3. The District Police Officer, District Mohamand.....(**Respondents**)

Present:

Mr. Umar Farooq Mohmand, Advocate.....For appellant
Mr. Riaz Ahmad Paindakhel, Additional Advocate General ...For respondents
.....

Service Appeal No. 1871/2023

Date of presentation of Appeal.....15.09.2023
Date of Hearing.....10.07.2024
Date of Decision.....10.07.2024

Tanzeem Ullah, Ex-Constable No. 2882, District Police, District Mohmand.**Appellant**

Versus

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan Region at Mardan.
3. The District Police Officer, District Mohamand.....(**Respondents**)

Present:

Mr. Umar Farooq Mohmand, Advocate.....For appellant
Mr. Riaz Ahmad Paindakhel, Additional Advocate General ...For respondents
.....

CONSOLIDATED JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): Through this single judgment we intend to dispose of the above titled service appeals as common questions of law and facts are involved therein.

2. Precise averments as raised by the appellants namely Rafiq and Tanzeem Ullah in their respective service appeals are that they were proceeded against departmentally on the allegations that they were charged in a cross version FIR vide Daily Dairy No. 16 dated 25.07.2021 under sections 302/34 PPC by Police Station Ekka Ghund. On conclusion of the inquiry, both the appellants were awarded major punishment of dismissal from service vide separate impugned order dated 10.03.2022 passed by District Police Officer, Mohmand Tribal District. Feeling aggrieved from the impugned order dated 10.03.2022, the appellants filed separate departmental appeals on 22.03.2022, which were allowed vide separate order dated 17.07.2023 and they were reinstated in service by treating the intervening period as leave without pay. The aforementioned orders dated 17.07.2023 to the extent of treating the intervening period as leave without pay, were challenged by the appellants through filing of separate service appeals on 15.09.2023.

3. The respondents were summoned, who contested the appeal by way of filing their respective para-wise comments.

4. Arguments heard and case file perused.

5. The learned counsel for the appellants contended that the acquittal of the appellants effectively nullifies the basis of the dismissal, therefore, the appellant should be reinstated with all attendant rights and privileges,

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including the appropriate treatment of the intervening period. He next contended that typically, an employee cleared of charges should have their period of dismissal treated as under suspension and this standard practice mitigates undue financial and professional penalties stemming from wrongful accusations. He further contended that the period treated as leave without pay not only deprived the appellants of financial sustenance but also imposed an emotional and psychological burden during an already distressing legal ordeal, therefore, fairness dictate that the appellants should not suffer further post-acquittal. In the last he requested, that both the appeals in hand may be accepted by treating the intervening period as on duty.

6. Conversely, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellants and contended that the department retains the discretion to classify the intervening period. He next contended that according to the department's policies and standard operating procedures, there is room to classify the period as leave without pay, therefore, the act of reinstatement, in itself, was a sufficient remedial action acknowledging the appellants acquittal. He further contended that the appellants have not performed any duties during the intervening period, therefore, on the principle of "no work no pay" they are not entitled for any financial benefits. In the last, he argued that both the appeals in hand may be dismissed with costs.

7. The perusal of the record would reveals that the appellants were dismissed from service vide separate orders dated 10.03.2022 on the allegations that they were charged in a cross version FIR vide Daily Diary

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No. 16 dated 25.07.2021 under sections 302/34 PPC by Police Station Ekka Ghund. Against the impugned orders dated 10.03.2022, both the appellants filed separate departmental appeals, however the same were kept pending till the decision of criminal court. In the meanwhile, both the appellants were acquitted in the concerned criminal case vide order dated 12.05.2023 passed by the District & Sessions Judge, Mohmand. The record further reveals that after acquittal of the appellants in the concerned criminal case, they were reinstated in service on the basis of court orders and their intervening period was treated as leave without pay, vide separate orders dated 17.07.2023 passed by the Regional Police Officer, Mardan. The aforementioned orders dated 17.07.2023 to the extent of treating the intervening period as leave without pay, were challenged by the appellants through filing of separate service appeals on the ground that the very charges on the basis of which they were dismissed from service has already been vanished away, therefore, they are entitled for back benefits for the intervening period. The acquittal of the appellants clear any wrongdoing associated with the initial dismissal order and acquittal mandates a review and rectification of the appellant's professional records and financial entitlements for the period in question. Furthermore, established legal and administrative precedents support the treatment of the intervening period as under suspension, particularly where the charges leading to dismissal have been unequivocally dismissed by acquittal. The court concurs with the appellant's counsel that treating this period as leave without pay imposes an undue hardship. They were not willfully absent from duty and the circumstances were not in


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their control. Moreover, the reinstatement of the appellants in service by the department itself acknowledged, however, the treatment of the intervening period as leave without pay is found to be unjust, therefore, their intervening period should be reclassified as under suspension to mitigate financial and professional detriment resulting from the wrongful dismissal.

8. Consequently, both the appeals are allowed with the direction to the respondents to treat the intervening period of both the appellants as a period under suspension. 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 11 day of July, 2024.*


AURANGZEB KHATTAK
Member (Judicial)


RASHIDA BANO
Member (Judicial)

Naeem Amin

ORDER

10th July, 2024

1. Appellant alongwith his counsel present. Mr. Riaz Ahmad Paindakhel, Additional Advocate General for the respondents present. Arguments heard and record perused.
2. Vide our consolidated judgment of today placed on file, the appeal in hand as well as connected Service Appeal No. 1871/2023 titled "*Tanzeem Ullah Versus The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and others*" are allowed with the direction to the respondents to treat the intervening period of both the appellants as a period under suspension. 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 10 day of July, 2024.*



(Rashida Bano)
Member (Judicial)



(Aurangzeb Khattak)
Member (Judicial)