

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

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

*Service Appeal No. 1220/2023*

Date of presentation of Appeal.....12.05.2023  
Date of Hearing.....10.07.2024  
Date of Decision.....10.07.2024

**Najeeb Ullah**, Ex-Constable No. 1862, DSP/Rural-II, Bannu.  
.....*Appellant*

Versus

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

Present:

Syed Noman Ali Bukhari, Advocate.....For appellant  
Mr. Riaz Ahmad Paindakhel, Additional Advocate General ...For respondents  
.....

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** The appellant Najeeb Ullah, Ex-Constable No. 1862, was proceeded against departmentally on the allegations of malafidely passing erroneous information of Charas in collusion with alleged private informer Javed Wazir to I/C NET on 05.12.2022 and showing false recovery of Charas from the possession of Ahmad, Sajjad and Jalal. On conclusion of the inquiry, the appellant was awarded major punishment of removal from service vide impugned order dated 26.01.2023 passed by District Police Officer, Bannu. Feeling aggrieved from the impugned order dated 26.01.2023, the appellant filed departmental appeal on 06.02.2023, which was rejected by Regional Police Officer, Bannu Region, Bannu

vide impugned order dated 13.04.2023. The appellant has now approached this Tribunal through filing of instant service appeal on 12.05.2023 for redressal of his grievance.

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

3. Arguments heard and case file perused.

4. The learned counsel for the appellant contended that the appellant was not at all associated with the inquiry proceedings, therefore, the appellant was condemned unheard. He next contended that neither any charge sheet or statement of allegations was issued to the appellant nor he was given any opportunity to cross-examine the witnesses. He further contended that no final show-cause notice or copy of inquiry report was provided to the appellant and he was thus unable to properly defend himself in the inquiry, therefore, the impugned orders are illegal and liable to be set-aside. In the last he requested, that appellant may be reinstated in service with all back benefits.

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was removed from service on the charges of providing erroneous information to In-charge Net and having alleged wrongful connections with his source leading to a fake recovery. He next contended that a proper inquiry was conducted against the appellant and the allegations against him stood proved during the inquiry. He further contended that the appellant was associated with the inquiry proceedings and he was provided opportunity of self defense as well as personal hearing but he failed to prove his innocence. He also

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contended that the appellant has been awarded the impugned penalty after fulfilling of all legal and codal formalities, therefore, the appeal in hand may be dismissed with cost.

6. The perusal of the record reveals that the appellant joined the Police Department in the year 2007. On 09/12/2022, the appellant was served with a charge sheet on the allegations that he conveyed erroneous information to police regarding charas resulting in wrongful recovery. The appellant responded to the charge sheet and denied the allegations leveled against him. The record further reveals that DSP/Rural-II, Bannu was appointed as inquiry officer in the mater, who conducted inquiry and recorded the statements of witnesses namely S.I Aman Ullah Khan, Incharge NET Police Line, ASI Inam concerned Police Line and Muhammad Javed S/o Miraj-ud-Din R/o Kam Chishme Domail but the appellant was not provided an opportunity of cross examination to the said witnesses so examined during the inquiry proceedings. The incriminating material was also not put in shape of evidence and thus the appellant was not provided an opportunity to rebut the same. As the appellant was not provided an opportunity of cross examination of the witnesses examined during the inquiry, therefore, such evidence could not be legally taken into consideration for awarding penalty to the appellant. Furthermore, the available record does not show that the witnesses were examined in presence of the appellant. August Supreme Court of Pakistan in its judgment reported as 2023 SCMR 603 has observed as below:-

*"10. The scrutiny and analysis of the aforesaid Rules and the procedure set forth therein (present or repealed) unambiguously divulge that the right of*

*proper defence and cross-examination of witnesses by the accused is a vested right. Whether the evidence is trustworthy or inspiring confidence could only be determined with the tool and measure of cross-examination. The purpose of the cross-examination is to check the credibility of witnesses to elicit truth or expose falsehood. When the statement of a witness is not subjected to the cross-examination, its evidentiary value cannot be equated and synchronized with such statement that was made subject to cross-examination, which is not a mere formality, but is a valuable right to bring the truth out. If the inquiry officer or inquiry committee is appointed for conducting inquiry in the disciplinary proceedings, it is an onerous duty of such Inquiry Officer or Inquiry Committee to explore every avenue so that the inquiry may be conducted in a fair and impartial manner and should avoid razing and annihilating the principle of natural justice which may ensue in the miscarriage of justice. The possibility cannot be ruled out in the inquiry that the witness may raise untrue and dishonest allegations due to some animosity against the accused which cannot be accepted unless he undergoes the test of cross-examination which indeed helps to expose the truth and veracity of allegations. The whys and wherefores of cross-examination lead to a pathway which may dismantle and impeach the accurateness and trustworthiness of the testimony given against the accused and also uncovers the contradictions and discrepancies. Not providing an ample opportunity of defence and depriving the accused officer from right of cross-examination to departmental representative who lead evidence and produced documents against the accused is also against Article 10-A of the Constitution in which the right to a fair trial is a fundamental right. What is more, the principles of natural justice require that the delinquent should be afforded a fair opportunity to coverage, give explanation and contest it before he is found guilty and condemned. The doctrine of natural justice is destined to safeguard individuals and whenever the civil rights, human rights, Constitutional rights and other guaranteed rights under any law are found to be at stake, it is the religious duty of the Court to act promptly to shield and protect such fundamental rights of every citizen of this country. The principle of natural justice and fair-mindedness is grounded in the philosophy of affording a right of audience before any detrimental action is taken, in tandem with its ensuing constituent that the foundation of any adjudication or order of a quasi-judicial authority, statutory body or any departmental*

*Amir  
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*authority regulated under some law must be rational and impartial and the decision maker has an adequate amount of decision making independence and the reasons of the decisions arrived at should be amply well-defined, just, right and understandable, therefore, it is incumbent that all judicial, quasi-judicial and administrative authorities should carry out their powers with a judicious and evenhanded approach to ensure justice according to tenor of law and without any violation of the principle of natural justice. (Ref: Sohail Ahmad v. Government of Pakistan through Secretary of Interior Ministry, Islamabad and others (2022 SCMR 1387) and Inspector General of Police, Quetta and another v. Fida Muhammad and others (2022 SCMR 1583)."*

7. Moreover, as per the available record, the appellant was not provided copy of inquiry report alongwith copy of final show-cause notice. This Tribunal has already held in numerous judgments that issuance of final show-cause notice along with the inquiry report is must under Police Rules, 1975. Reliance is also placed on the judgment delivered by august Supreme Court of Pakistan reported as PLD 1981 SC-176, wherein it has been held that rules devoid of provision of final show cause notice along with inquiry report were not valid rules. Non issuance of final show cause notice and non-supply of copy of the findings of the inquiry officer to the appellant has caused miscarriage of justice as in such a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him. The failure to issue a final show-cause notice alongwith a copy of the inquiry report to the appellant is a significant procedural irregularity. It is a clear breach of the principles of natural justice and contravenes the regulatory requirements governing disciplinary proceedings. Therefore, the procedural shortcomings in the disciplinary process rendered the proceedings untenable. Furthermore, the principal


*10/07/2024*


Service Appeal No.1220/2023 titled "Najeeb 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.

of natural justice embedded in administrative law mandates that no one shall be condemned unheard. This encompasses the "audi alteram partem" rule, which ensures every individual the right to fair hearing.

8. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders dated 26.01.2023 & 13.04.2023 and the appellant is reinstated in service for the purpose of de-novo inquiry 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 appellant shall be associated with the inquiry proceedings and fair opportunity including opportunity of cross-examination be provided to him to defend himself. 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 10 day of July, 2024.*

  
**AURANGZEB KHATTAK**  
Member (Judicial)

  
**RASHIDA BANO**  
Member (Judicial)


\*Naeem Amin\*

**ORDER**  
10<sup>th</sup> July, 2024

1. Appellant alongwith his counsel present. Mr. Riaz Ahmad Paindakhel, Additional Advocate General alongwith Mr. Sajjad, Inspector (Legal) for the respondents present. Arguments heard and record perused.

2. Vide our judgment of today placed on file, the appeal in hand is allowed by setting-aside the impugned orders dated 26.01.2023 & 13.04.2023 and the appellant is reinstated in service for the purpose of de-novo inquiry 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 appellant shall be associated with the inquiry proceedings and fair opportunity including opportunity of cross-examination be provided to him to defend himself. 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 10 day of July, 2024.*

  
(Rashida Bano)  
Member (Judicial)

  
(Aurangzeb Khattak) 10/07  
Member (Judicial) 2024