

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN
AURANGZEB KHATTAK...MEMBER (Judicial)**

Service Appeal No.1561/2023

Date of presentation of appeal.....01.08.2023
Dates of Hearing.....22.07.2024
Date of Decision.....22.07.2024

**Naseeb Khan S/O Khewa Khan, Presently posted as Incharge DRC
Hassan Khel (PS Hassan Khel) Sub Division District Peshawar.**

.....*Appellant*

Versus

1. **Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.**
 2. **Capital City Police Officer, Police Line, Peshawar.**
 3. **Senior Superintendent of Police (Operation) Police Line, Peshawar.**
 4. **Superintendent of Police Saddar Division CCP Peshawar.**
-(*Respondents*)

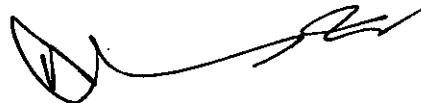
Present:

Mr. Sajeed Khan Afridi, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney...For respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDER DATED
22.06.2023 WHEREBY REPRESENTATION/APPEAL
OF THE APPELLANT WAS PARTIALLY
ALLOWED WITH FORFEITURE OF ONE YEAR
APPROVED SERVICE AND PERIOD OUT OF
SERVICE WILL BE TREATED AS LEAVE
WITHOUT PAY BY THE RESPONDENT NO.2
AGAINST THE ORDER OF DISMISSAL FROM
SERVICE DATED 24.02.2023.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the
memorandum and grounds of appeal, the appellant was serving

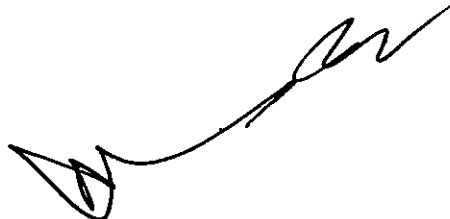


in the Police Department and was posted at Hassan Khel; that on 22.11.2022, in connection of demarcation of the land of one Said Bahadur, who had approached Revenue Authorities for resolution of his land dispute, the said person was shot dead at the time of demarcation of his land, by his opponents; that FIR No.170 dated 22.11.2022 was lodged against Sadiq, Roseen Khan and Ajmal Khan was lodged; that on the basis of the said occurrence, the appellant was issued charge sheet/statement of allegations, holding guilty the appellant for his ignorance, however, the same were replied by the appellant; that an inquiry was also conducted, resultantly, vide order dated 2.02.2023 he was dismissed from service; that feeling aggrieved, he filed representation, which was partially allowed vide order dated 22.06.2023 by awarding punishment of forfeiture of one year's approved service and treating the period out of service as leave without pay, against which he filed the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and submitted reply.

3. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal



while the learned Deputy District Attorney controverted the same by supporting the impugned order.

5. Perusal of record reveals that appellant, being SHO Hassan Khel, was charged for his alleged negligence in duties due to which, one Said Bahadur was killed by his opponents in the presence of Police. Charge sheet/statement of allegations were served, he was dismissed from service but on his representation to the higher authority, his dismissal was converted into forfeiture of one year's approved service and the period for which he remained out of service was treated as leave without pay. Although, the appellant has been reinstated in service, however, other colleagues, accused with the same charges, were reinstated in service with all back benefits, while the appellant's penalty was converted into lessor penalty.

6. Three lacunas have been noted while passing the impugned order. The said are:

1. Disparity in treatment:

The appellant was treated differently than his colleagues who were accused of the same charges. While they were reinstated with all back benefits, the appellant's penalty was converted into forfeiture of one year's approved service and leave without pay.

2. Lack of consistency:



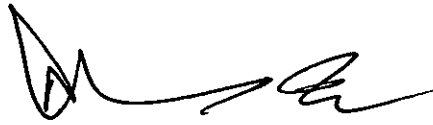
The decision to convert the appellant's dismissal into a lesser penalty, but still not reinstating him with full benefits, raises questions about the consistency of the disciplinary action.

3. Potential unfairness:


The fact that the appellant's colleagues were reinstated with full benefits, while the appellant was not, suggests unfair treatment.

7. In light of the above factors, we are of the view to rule in favor of the appellant, setting aside the impugned order dated 22.06.2022 and directing the respondents that the appellant be reinstated in service with all back benefits, consistent with the treatment of his colleagues accused of the same charges. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22nd day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



AURANGZEB KHATTAK
Member (Judicial)


Mutazem Shah


10th May, 2024

SCANNED
Peshawar

1. Learned counsel for the appellant present. Mr. Arshad Azam, Assistant Advocate General for the respondents present.

2. Being not prepared, learned counsel for the appellant seek adjournment. Adjourned. To come up for arguments on 22.07.2024 before the D.B. Parcha Peshi given to the parties.


(Muhammad Akbar Khan)
Member (Executive)


(Kalim Arshad Khan)
Chairman

Naeem Amin

S.A #.1561/2023


ORDER


22nd July, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Heard.

2. Vide our detailed judgment of today placed on file we are of the view to rule in favor of the appellant, setting aside the impugned order dated 22.06.2022 and directing the respondents that the appellant be reinstated in service with all back benefits, consistent with the treatment of his colleagues accused of the same charges. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22nd day of July, 2024.*


(Aurangzeb Khattak)
Member (J)


(Kalim Arshad Khan)
Chairman

Aaazem Shah