

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No. 1953/2023

Date of presentation of Appeal.....31.08.2023
Date of Hearing.....22.07.2024
Date of Decision.....22.07.2024

Junaid Gul, Ex-Constable No. 594, Capital City Police, Peshawar.
.....**Appellant**

Versus

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Capital City Police Officer, Peshawar.
3. The Superintendent of Police Headquarter, Peshawar
.....**(Respondents)**

Present:

Mr. Waleed Adnan, Advocate.....For appellant
Mr. Muhammad Jan, District AttorneyFor respondents
.....

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: According to the facts gathered from the record are that the appellant, while serving as Constable in Police Department, was proceeded against departmentally on the allegations of misconduct, including absences and fraudulent activities. On conclusion of the departmental proceedings, the appellant was removed from service vide impugned order dated 16.09.2022. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide impugned order dated 30.01.2023, compelling the appellant to file revision petition before the Inspector General of Police, Khyber Pakhtunkhwa, however, the same was also rejected vide

impugned order dated 28.08.2023. The appellant then approached this Tribunal through filing of instant appeal for redressal of his grievance.

2. On receipt of the appeal and its admission to regular hearing, the respondents were summoned. Respondents put appearance through their respective representative and contested the appeal by way of filing para-wise reply, raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant contended that neither any show-cause notice was served upon the appellant nor was he provided any opportunity to defend against the charges before his removal from service, therefore, the appellant was condemned unheard, He next contended that neither any charge sheet was issued to the appellant nor proper inquiry was conducted as legally required, therefore, in absence of a comprehensive statement of allegations against the appellant prior to his removal was a serious procedural flaw. He further contended that the appellant was not given a chance to cross-examine the witnesses or defend himself adequately during the inquiry process. He also contended that the adverse findings by the respondents regarding the appellant alleged financial misconduct lacked credible evidence and was not substantiated adequately during the inquiry. In the last he argued, that the impugned orders might be set-aside and the appellant might be reinstated in service with all back benefits.

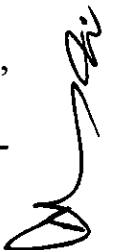
4. On the other hand, learned District Attorney for the respondents contended that the appellant had a substantial history of disciplinary issues including nine bad entries and seven punishments (both minor and major) for fraudulent activities. He next contended that two

inquiries were conducted against the appellant on the allegations of defrauding individuals of Rs. 60,000/- and Rs. 80,000/-, using deceitful tactics including handing over a fake cheque. He further contended that the appellant remained absent from duty with effect from 30.08.2022 to 16.09.2022 without any leave or permission from the competent authority, which amounted to gross misconduct. He next argued that proper charge sheet and statements of allegations were issued to the appellant and he was given multiple opportunities, including a final show cause notice on 01.09.2022, but failed to present his defense. In the last, he argued that all the legal codal formalities were fulfilled before passing the impugned orders, therefore, the appeal in hand may be dismissed with cost.

5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.

6. A perusal of the record show that the appellant, while performing his duties, was proceeded against departmentally on the allegations of taking money amounting to Rs. 60000/- fraudulently from the complainant namely Mr. Nawaz Muhammad S/o Muhammad Gul in the pretext of his appointment in Police Department as well as taking Rs. 80000/- from HC Mehran Gul No. 4911 in pretext of providing him brick for construction and also absence from duty for 16 days. On conclusion of the departmental proceedings, the appellant was awarded major punishment of removal from service vide impugned order dated 16.09.2022. The record further reveals that two separate inquiries were conducted against the appellant but astonishingly the inquiry officer has

neither recorded statements of the two complainants nor the appellant was provided opportunity of cross-examination. The essence of a fair hearing includes the opportunity to contest the evidence and cross-examine witnesses. The procedure followed in this case where the appellant was not provided with a chance to respond to the allegations personally nor allowed to cross-examine witnesses, constitutes a significant violation of the principles of natural justice. Furthermore, the assertion of the appellant that no proper charge sheet or statement of allegations were provided prior to the disciplinary action must be examined. The failure to furnish these documents and lack of an opportunity for the appellant to present a defense before the removal order indicates a substantive breach of mandatory procedural requirements. The evidence presented by the respondents, including claims of the appellant misconduct and previous disciplinary actions, does not preempt the need for a transparent and fair inquiry process. Any purported misconduct cannot justify the circumventing of the due process. It is held that the impugned orders were passed without adherence to the legal requirements pertaining to fair disciplinary proceedings. The failure to allow cross-examination and to ensure that all procedural norms were followed renders the actions taken by the respondents excessive and unjust. Therefore, we deem it appropriate that a de-novo inquiry is essential to ascertain the facts and reassess the procedural compliance. The inquiry officer shall afford the appellant a fair chance to defend himself, including issuing a proper charge sheet, statements of allegations, and providing opportunities for cross-examinations and hearings.




7. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service for the purpose of inquiry with the direction to the respondents to conduct de-novo inquiry strictly in accordance with law and rules within a period of 90 days from the date of receipt of copy of this judgment, duly associating the appellant and providing him fair opportunity of defence as well as cross-examination. 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 22 day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



AURANGZEB KHATTAK
Member (Judicial)


Naeem Amin


Service Appeal No. 1953/2023 titled "Junaid Gul Versus The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and others".

ORDER

22nd July, 2024

1. Appellant alongwith his counsel present. Mr. Muhammad Wisal, Superintendent of Police alongwith Mr. Muhammad Jan, District Attorney 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 and the appellant is reinstated in service for the purpose of inquiry with the direction to the respondents to conduct de-novo inquiry strictly in accordance with law and rules within a period of 90 days from the date of receipt of copy of this judgment, duly associating the appellant and providing him fair opportunity of defence as well as cross-examination. 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 22 day of July, 2024.*


(Aurangzeb Khattak)
Member (Judicial)


(Kalim Arshad Khan)
Chairman