

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1810/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Pir Muhammad, Ex-Technical Head Constable No. 744-SB, S/O Noor Muhammad Khan, R/O village Umar Abad, Post Office Kaka Abad, Jangi Tehsil Katlang, District Mardan.(Appellant)

Versus

1. Inspector General of Police/Provincial Police Chief, Central Police Office(CPO), Peshawar.
2. Deputy Inspector General of Police, Special Branch Headquarter, Peshawar.
3. Senior Superintendant of Police (Admn) Headquarter Special Branch, Khyber Pakhtunkhwa, Peshawar.(Respondents)

Mr. Khyal Muhammad Mohmand,
Advocate ... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney ... For respondents

Date of Institution..... 15.12.2022
Date of Hearing..... 23.04.2024
Date of Decision..... 23.04.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 28.11.2022, whereby appeal of the appellant was dismissed by respondent No. 2, which was filed by the appellant against the order dated 21.09.2020 of respondent No. 3 by virtue of which major punishment of dismissal from service was imposed upon the appellant and on appeal, the same order was maintained by respondent No. 2 for the appellant. It has been prayed that on acceptance of the appeal, the impugned



order dated 28.11.2022 and order of dismissal from service dated 21.09.2020 might be set aside and the appellant be reinstated in service with all back benefits/consequential relief.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed in the police service Special Branch as a Technical Constable on 04.02.2008. The appellant was charged in a criminal case vide FIR No. 427 dated 30.06.2020 under section 302/324/34-PPC of Police Station Katlang, Mardan and on dismissal of BBA, was sent to jail. He was named and implicated in the FIR on mere suspicion and on the strength of being relative of the accused party. After conclusion of trial, he was acquitted from all the charges by the learned Additional Sessions Judge Mardan vide order dated 07.07.2022. Departmental authorities decided to proceed against the appellant under Police Rules, 1975/amended, 2014. After placing him under suspension, the charge sheet and statement of allegations were issued to the appellant by respondent No. 3. A regular inquiry was ordered and conducted, wherein the inquiry officer recommended that the inquiry be kept pending till the decision of the learned trial court. A denovo inquiry was conducted by the respondents wherein the inquiry officer recommended the appellant for imposition of major penalty. Final show cause notice was also issued by respondent No. 3 which was properly replied by the appellant. Respondent No. 3, on the strength of denovo inquiry report, passed order dated 21.09.2020, whereby major penalty of dismissal from service was awarded to the appellant. Feeling aggrieved, he filed departmental appeal on 10.08.2022 which was



rejected by respondent No. 2 vide order dated 28.11.2022; hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned orders dated 28.11.2022 and 21.09.2020 were coram non judice, illegal, without jurisdiction and lawful authority and against the principles of natural justice, hence liable to be set aside. He further argued that the appellant was implicated in the criminal case on mere suspicion and nothing was proved against him and hence, the learned trial court acquitted him from the charges. He argued that in the first inquiry report, it was recommended that the matter/inquiry should be kept pending till the conclusion of trial but a denovo inquiry was conducted, which was based on malafide intention and without waiting for the result of trial, the respondents dismissed the appellant from service. He further argued that no proper procedure was adopted and the appellant was neither given any opportunity of defence or cross-examination which was in violation of principles enshrined in law that no one should be condemned unheard. He requested that the appeal might be dismissed.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant, while posted in Special Branch Headquarters Peshawar, got involved in a criminal case vide

FIR No. 427 dated 30.06.2020 u/s 302/324/34/PPC, Police Station Katlang District Mardan, therefore, he was placed under suspension on 30.06.2020. According to him, although he was later on acquitted by the court of law, however, the criminal proceedings and departmental proceedings were two different entities and the fate of one did not affect the other. Furthermore, he was charged in a heinous criminal case which was a gross misconduct for someone in the disciplined force. He further argued that the appellant absented from his lawful duty on 26.06.2020, the day when the incident took place, without informing his high-ups and the Investigation Officer of the criminal case stated in his statement that the appellant, alongwith other three accused, was present on the spot. Final show cause notice was issued to him and opportunity of personal hearing was also afforded to him but he failed to advance any cogent reason regarding the allegations leveled against him and after fulfillment of all codal formalities major punishment was awarded to him. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant was involved in FIR No. 472 dated 30.06.2020 u/s 302/324/34 PPC P.S Katlang, Mardan. After dismissal of his bail before arrest, he was sent behind the bar. His departmental authorities placed him under suspension from the date of registration of FIR i.e 30.06.2020 and initiated departmental proceedings against him by issuing charge sheet and statement of allegations. There was only one allegation against him that he, while posted at SB/IIQrs Peshawar got involved in criminal case bearing FIR no. 427 dated 30.6.2020 u/s 302/34-PPC, P.S Katlang, District Mardan. The inquiry officer submitted



his report on 27.07.2020 with his recommendations that as the appellant had applied for BBA and the case was fixed for hearing on 25.07.2020 and investigation was also in progress, therefore the inquiry be kept pending till the decision of the learned court. The competent authority, instead of waiting for the outcome of case before the court of Additional Sessions Judge Mardan at Katlang, issued order for denovo inquiry which was accordingly conducted, as a result of which major punishment of dismissal from service was awarded.

7. There is no doubt that the appellant was involved in the inquiry proceedings. He was given an opportunity to present his case before the Inquiry Officer. It was found that the Inquiry Officer recorded the statement of Investigation Officer P.S Katlang District Mardan and it was the same as produced before the learned Additional and Sessions Judge Mardan at Katlang and based on the same evidence, the appellant had been acquitted of all the charges leveled against him vide judgment dated 07.07.2022. How could the Inquiry Officer in the denovo inquiry depend on the report/statement of the Investigation Officer P.S Katlang when the same was rejected by the learned Additional and Sessions Judge Mardan in case of the appellant? There is no second opinion that court proceedings and departmental proceedings can go parallel to each other, but in case of departmental proceedings, the Inquiry Officer based his inquiry report on the report of Investigation Officer, P.S Katlang, which was not accepted by the learned DSJ Mardan. It would have been a prudent approach for the department to wait for the outcome of court case, but it was noted that they acted in a hasty manner and passed the




impugned order on 21.09.2020, much before the court case was decided on 7.7.2022.

8. It has been held by the superior courts that all acquittals are considered honourable and that there can be no acquittals which may be said to be dishonourable. Nomination and involvement of the appellant in the criminal case was the sole ground on which he was dismissed from service. That ground subsequently disappeared when he was acquitted, making him re-emerge as a fit and proper person to continue his service. Reliance is placed on 1998 PLC(CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

9. In view of the above discussion, the appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 23th day of April, 2024.*


(FARIEHA PAUL)
Member (E)



(RASHIDA BANO)
Member(J)

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23rd Apr. 2024 01. Mr. Khiyal Muhammad Mohmand, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 23rd day of April, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS