

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1418/2021

SCANNED
13/06/2024
Peshawar

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Mukhtiar Hussain S/O Said Rehman Ex-HC No. 672, District Police,
Kohat.(Appellant)

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Headquarter,
Peshawar.
2. Additional Inspector General of Police, Khyber Pakhtunkhwa,
Headquarter, Peshawar.
3. District Police Officer, Kohat.....(Respondents)

Mr. Noor Wali Mughal,
Advocate ... For appellant

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

Date of Institution.....	07.12.2020
Date of Hearing.....	04.06.2024
Date of Decision.....	04.06.2024

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 order dated 29.10.2020, whereby two years approved service of the appellant was forfeited and 14 months salary detached during intervening period. It has been prayed that on acceptance of the appeal, the impugned order dated 29.10.2020 might be set aside alongwith all back benefits.


2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the Police Department in the year 1999 as a



Constable. He was serving as Head Constable in District Kohat when he, alongwith Muhammad Hanif, PASI, arrested Muhammad Asim Ameen S/O Ameen Gul R/O Kamal Khel Kohat in case FIR No. 1236 dated 24.08.2019 u/s 382, Police Station MRS, and brought him to the Police Station, where he allegedly committed suicide. The appellant was issued a charge sheet, suspended from service and an inquiry was conducted against him. He was dismissed from service by the District Police Officer Kohat vide order dated 16.09.2019. After his dismissal, departmental inquiry, as well as judicial inquiry, was conducted, wherein it was held that it was not a suicide. Feeling aggrieved from the order dated 16.09.2019, the appellant preferred departmental appeal, which was rejected. The appellate board considered his revision petition and vide order dated 29.10.2020, reinstated the appellant into service and his penalty of dismissal from service was converted into minor penalty of forfeiture of two years approved service, however, the intervening period was treated as leave without pay; hence the instant service appeal.

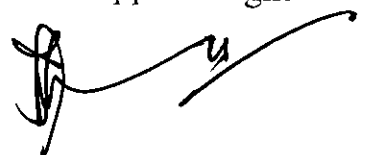
3. Respondents were put on notice who submitted written reply/comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned order dated 29.10.2019 was against the law, illegal and was liable to be set aside. No independent witness was examined during the inquiry proceedings nor chance of defence was



afforded to the appellant. Even statement of the appellant was not recorded. He further argued that the entire inquiry proceedings were not according to law and the impugned order was not based on sound reasons and the same was not sustainable in the eyes of law. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the accused, namely Asim Amin, was arrested by the appellant, alongwith his colleague ASI Muhammad Hanif. The accused was not properly searched by the appellant and his fellow ASI and was brought to the Police Station. The appellant was required to put the accused in lock up after thorough search but he was left in the room unattended which showed gross negligence and non-professionalism on his part. He further argued that regular inquiry was initiated under the relevant rules. Charge sheet was served upon the appellant and the allegations leveled against him were established and the departmental proceedings culminated into his dismissal from service vide order dated 17.09.2019. He further argued that on the request of DPO Kohat, a judicial inquiry was conducted by the Judicial Magistrate wherein it was proved that death of Mr. Asim Amin was not the result of suicide. He further argued that a lenient view had been taken against the appellant and his dismissal from service was converted into minor penalty of forfeiture of two years approved service and the intervening period was treated as leave without pay and the appellant was reinstated into service. He requested that the appeal might be dismissed.



6. Arguments and record presented before us show that appellant was proceeded against departmentally on the allegations of misconduct and negligence and was awarded major penalty of dismissal from service, which was later converted into minor punishment of forfeiture of two years of approved service and the intervening period was treated as leave without pay. Record further shows that another colleague of the appellant, Muhammad Hanif, was also proceeded against on the same case with the same allegations. His major penalty was also converted into minor penalty and when he preferred service appeal no. 444/2022 before the Tribunal, the appeal was allowed on 11.07.2023 as follows:-

"The only grievance of the appellant is that, while reinstating him, the revisional authority has not passed any order regarding payment of salaries of the intervening period. Therefore, he would be satisfied, as also District Attorney, if a direction is given to the respondents to make an appropriate order regarding salaries/benefits for the intervening period. Order accordingly. Consign."

7. In pursuance of the order in service appeal No. 444/2022 of Muhammad Hanif, the appellate board allowed the salaries for the intervening period vide an order dated 22.01.2023. In view of the above discussion, we allow this appeal and direct the respondent department to treat the appellant in the same way as they had treated Muhammad Hanif, who was proceeded against in the same case and was served with



the same charge sheet, because no two accused with the same allegations could be treated in different ways with different punishments. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 04th day of June, 2024.*


(FARISHTA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

FazleSubhan, P.S

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04th June, 2024 01. Mr. Noor Wali Mughal, 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 05 pages, we allow this appeal and direct the respondent department to treat the appellant in the same way as they had treated Muhammad Hanif, who was proceeded against in the same case and was served with the same charge sheet, because no two accused with the same allegations could be treated in different ways with different punishments. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 04th day of June, 2024.*



(FARNAHA PAUL)
Member (E)



(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS