

Service Appeal No.662/2023 titled "Arif Versus The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No. 663/2023 titled "Abdul Baseer Versus The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others" and Service Appeal No. 1164/2023 titled "Muhammad Jalal Versus Deputy Commandant RRF Khyber Pakhtunkhwa Peshawar and other" decided on 19.07.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Miss. Fareeha Paul, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 662/2023

Date of presentation of Appeal.....14.03.2023
Date of Hearing.....19.07.2024
Date of Decision.....19.07.2024

Arif, Ex-Constable No. 887, NET, Mardan.....Appellant

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan Region Mardan.
3. The District Police Officer, Mardan.....(**Respondents**)

Present:

Syed Noman Ali Bukhari, AdvocateFor appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

Service Appeal No. 663/2023

Date of presentation of Appeal.....14.03.2023
Date of Hearing.....19.07.2024
Date of Decision.....19.07.2024

Abdul Baseer, Ex-Inspector No. MR-142, Mardan.....Appellant

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan Region Mardan.
3. The District Police Officer, Mardan.....(**Respondents**)

Present:

Syed Noman Ali Bukhari, AdvocateFor appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

Service Appeal No. 1164/2023

Date of presentation of Appeal.....08.05.2023
Date of Hearing.....19.07.2024

19/07/2024

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Date of Decision.....19.07.2024

Muhammad Jalal, Ex-Constable No. 2236 District Police Mardan.
.....**Appellant**

Versus

1. Deputy Commandant RRF Khyber Pakhtunkhwa Peshawar.
2. Additional IGP/Commandant Elite Force Khyber Pakhtunkhwa Peshawar.(**Respondents**)

Present:

Mr. Kabir Ullah Khattak, AdvocateFor appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

CONSOLIDATED JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): This consolidated judgment is directed to dispose of all the three service appeals captioned above, as common questions of law and facts are involved in all the three appeals.

2. The appellants namely, Arif, Driver, Abdul Baseer, Inspector and Muhammad Jalal, Constable, while posted at Narcotics Eradication Team (NET) in Mardan, were proceeded against departmentally on the allegations of unlawful detention of one Wahab and demanding Rs. 2 Crore as an illegal gratification from his brother namely Haji Rafiq. Following these allegations, an FIR No. 303 dated 04.08.2022 under sections 365-A-PPC/15-AA was also registered against the appellants at Police Station Sheikh Maltoon, leading to the dismissal from service of the appellants Arif, Abdul Baseer and Muhammad Jalal vide separate impugned orders dated 05.01.2023 and 13.02.2023 respectively. Feeling aggrieved, they filed separate departmental


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appeals, which were dismissed vide separate impugned orders dated 21.02.2023 and 26.04.2023 respectively. The appellants have now approached this Tribunal through filing of above-mentioned separate Service Appeals for redressal of their grievance.

3. The respondents were summoned, who contested all the three appeals by way of filing their respective written replies/comments.

4. Arguments heard and case files perused.

5. The learned counsel for the appellants contended that the appellants were not given a fair chance to present their case, or cross-examine the witnesses, therefore, the inquiry was conducted in a one-sided manner without provision for due process. He next contended that the appellants denied the allegations regarding the unlawful custody of Wahab and the demand for illegal gratification. He further contended that the appellants have already been acquitted in the concerned criminal case by the court of competent jurisdiction, therefore, the very charges on the basis of which they were dismissed from service have vanished away. He next argued that despite submitting replies and explanations during departmental proceedings, they were not provided the chance of personal hearing before passing the impugned orders. He further argued that the proceedings contravened Article 10 of the Constitution of Islamic Republic of Pakistan, therefore, the impugned orders may be set-aside and the appellants may be reinstated in service with all back benefits.

6. Conversely, the learned Deputy District Attorney for the respondents contended that appellants were charged with serious

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misconduct of unlawfully detaining Wahab and demanding a bribe of Rs. 2 Crore for his release, which warranted departmental proceedings. He next contended that the inquiry was conducted following all legal and codal formalities and the appellants were also provided opportunities to defend themselves but they failed to present cogent evidence. He further contended that the appellants were given chance of personal hearing but they failed to prove their innocence. He also contended that departmental and criminal proceedings are independent and the acquittal in the criminal case does not influence departmental actions or outcomes. He next argued that the involvement in illegal activities reflects poorly on the integrity expected from a disciplined force, hence the strict penalty was appropriate. He further argued that considering the gravity of the misconduct, the penalty of dismissal is proportionate and justified, therefore, all the above-mentioned service appeals may be dismissed with costs.

7. The perusal of the record reveals that Driver Arif, Inspector Abdul Baseer and Constable Muhammad Jalal, while posted at Narcotics Eradication Team (NET) in Mardan, were proceeded against departmentally on the allegations of unlawful detention of Wahab and demanding Rs. 2 Crore as an illegal gratification from his brother namely Haji Rafiq for his release. Charge sheets were issued, followed by the appointment of the Superintendent of Police Investigation, Mardan, as the Inquiry Officer. The appellants denied the charges in their response. The inquiry was allegedly one-sided, excluding the appellants from cross examining the witness. An FIR No. 303 dated

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04.08.2022 under sections 365-A-PPC/15-AA was also registered against the appellants at Police Station Sheikh Maltoon. However, they were acquitted by the Anti-Terrorism Court Mardan on 11.01.2023 under Section 265-K Cr.PC, indicating insufficient evidence for a criminal conviction. Despite the acquittal of the appellants, final show-cause notices were issued to them, which culminated into dismissal of the appellants vide separate impugned orders dated 05.01.2023 and 13.02.2023 respectively without a personal hearing. The acquittal under Section 265-K Cr.PC indicates a lack of sufficient criminal evidence, however, it does not automatically exonerate the appellants from departmental misconduct. A thorough re-examination of the inquiry process is required. The principles of natural justice were compromised as the appellants were not provided the opportunity to cross-examine witnesses and were not granted chance of personal hearing before imposing the major penalty of dismissal from service. The right to cross-examine the witnesses is a fundamental aspect of due process. It serves as a mechanism for parties to challenge the reliability and credibility of evidence presented against them. The failure to provide such an opportunity raises serious concerns regarding the fairness and validity of the proceedings. The investigation appears procedurally deficient due to the exclusion of cross-examination rights and lack of a personal hearing. This necessitates a re-evaluation to ensure fairness.


8: In view of the above discussion, the impugned orders are set aside and all the above-mentioned three appellants are reinstated in

*Amir
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service with the direction to the respondents to conduct de-novo inquiry, ensuring adherence to principles of natural justice, including the right to cross-examine witnesses and adequate opportunity for defense. The de-novo inquiry is to be completed within a period of 90 days from the date of receipt of copy of this judgment. 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 19 day of July, 2024.*


AURANGZEB KHATTAK
Member (Judicial)


FAREEHA PAUL
Member (Executive)


Naeem Amin


ORDER
19th July, 2024

1. Learned counsel for the appellant present. Mr. Atta-ur-Rehman, DSP (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our consolidated judgment of today placed on file, the impugned orders are set aside and the appellant in the instant appeal as well as appellant namely Abdul Baseer in Service Appeal No. 663/2023 and appellant namely Muhammad Jalal in Service Appeal No. 1164/2023 are reinstated in service with the direction to the respondents to conduct de-novo inquiry, ensuring adherence to principles of natural justice, including the right to cross-examine witnesses and adequate opportunity for defense. The de-novo inquiry is to be completed within a period of 90 days from the date of receipt of copy of this judgment. 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 19 day of July, 2024.*


(Fareeha Paul)
Member (Executive)


(Aurangzeb Khattak)
Member (Judicial)
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