

ORDER

18.07.2024

1. Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, the impugned orders are set aside and the appellant is reinstated into service with all back benefits. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of July, 2024.*



(RASHIDA BANO)
Member (J)



(KALIM ARSHAD KHAN)
Chairman

before him that said comments were posted by his wife and not by him. Inquiry officer did not bother to dig out the truth or even to make said video and comments allegedly posted by the appellant part of the record. So in absence of the said viral video and comments allegedly posted by the appellant to hold appellant guilty of misconduct is against the rules and justice. Moreover, not written statement of appellant by inquiry officer was produced from which it could be established that infact he confessed his guilt by him on the basis of which he recommended punishment of termination of the appellant from service.

8. For what has been discussed above, the impugned orders are set aside and the appellant is reinstated into service with all back benefits. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of July, 2024.*



(RASHIDA BANO)
Member (J)



(KALIM ARSHAD KHAN)
Chairman

6. Perusal of record reveals that appellant was serving as constable in respondent department when on 17.08.2021 he was served with charge sheet and statement of allegations with the allegation mentioned in the charge sheet as below:


i. A religious video went viral on social media where he made provocative remarks against the companions of the Prophet (S.A.W) which triggered an uninterrupted criticism between Ahle-Sunnat and AhleTshee community on mainstreaming and social media platforms, thus it caused a lot of pernicious, detrimental situations to the entire police force.

ii. His past record also corroborates, where he has history of suspension, dismissal, enquiries etc.

iii. By doing so he has transgressed/violated the police rules governing the police force.

DSP Subrab was appointed as Inquiry Officer who summoned the appellant. As per inquiry officer, appellant confessed his guilt before him on the basis of which he recommended registration of criminal case against the appellant besides dismissal from service and submitted his report on 24.08.2021 within a week of his nomination as inquiry officer.

7. The most important thing is that the viral video and comments posted by the appellant which are in essence the only allegation against the appellant but that astonishing substance/video and comments of the appellant upon the said viral video was not placed before the appellant neither the same was brought before us by the respondent from which nature of any provocation could be ascertained. So, in the absence of the very bone of contention i.e viral video and comments posted to hold the appellant guilty is unjustified only on the basis of his so called confession because if inquiry officer admitted correct the statement of the appellant then he must accept it in toto because as per inquiry officer in his report mentioned that appellant stated



zeal and zest. On 13.09.2021 the respondents issued impugned office order whereby the appellant was dismissed from service. Feeling aggrieved, appellant filed departmental appeal on 15.09.2021 which was rejected vide order dated 25.03.2022. On 29.03.2022 he filed revision petition, which was also rejected vide order dated 09.02.2023, hence the instant service appeal.

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

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules; that the impugned office order is against the law, rules, facts, circumstances, void ab-initio, hence liable to be set aside; that no proper and regular inquiry has been conducted by the respondents in the matter; that no opportunity of personal hearing was afforded to the appellant and he was condemned unheard; Lastly, he submitted that instant appeal might be accepted as prayed for.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that the appellant while posted as Brass Band CCP, Peshawar was placed under suspension and proceeded departmentally on account of religious video went viral on social media where he made provocative remarks and the companions of the Prophet (S.A.W) were targeted uninterrupted criticism by Ahle-Tashee community on social media platform. In this regard, he was issued charge sheet alongwith statement of allegations and proper departmental inquiry was conducted against him. During the course of inquiry, the appellant has also confessed his guilt and accepted his negligence. After completion of inquiry proceedings, he was issued final show cause notice to which he replied and also heard him in person but his explanation was found unsatisfactory. Therefore, he was awarded punishment of dismissal from service.



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1277/2022

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Waqar Ali Ex-Constable Belt No. 3171 R/O Police Line Quarter Peshawar.
.... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Capital City Police Officer Line Peshawar.
3. The Senior Superintendent of Police Operation Police Line Peshawar.
.... (Respondents)

Mr. Naveed Jan
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....31.08.2022
Date of Hearing.....18.07.2024
Date of Decision.....18.07.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal the impugned office orders dated 13.09.2021, 25.03.2022 and 09.02.2023 may graciously be set aside and the appellant may also be reinstated in service with all back benefits.”

2. Brief facts of the case are that appellant was appointed as Constable in the Police Department vide order dated 05.09.2008 and was performing his duty with

