

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, ABBOTTABAD

Service Appeal No. 32/2023

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

Umar Farooq son of Abdus Salam (Ex-Constable No. 4848/FRP) Hazara Region Abbottabad, resident of Changi Bandi Tehsil and District Haripur.
(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs, Peshawar.
2. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
3. Commandant Frontier Reserve Police, Peshawar.
4. Regional Police Officer/DIG Hazara Region at Abbottabad.
5. Superintendent of Police, Frontier Reserve Police Hazara Region, Abbottabad.(Respondents)

Mr. Hamayun Khan,
 Advocate

... For appellant

Mr. Asif Masood Ali Shah,
 Deputy District Attorney

... For respondents

Date of Institution.....	04.01.2023
Date of Hearing.....	24.07.2024
Date of Decision.....	24.07.2024

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 16.09.2022 passed by respondent No. 5 whereby appellant was dismissed from service with effect from 03.07.2022. It has been prayed that on acceptance of the appeal, the impugned order dated 16.09.2022 might be set aside and appellant be reinstated into service with all back benefits.

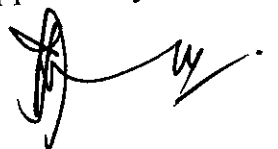
2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Constable in the Frontier Reserve Police



Hazara vide order dated 12.10.2010. He was sent to Police Training School and on completion of training, he was posted at different stations. On 03.07.2022, his opponents lodged FIR No. 292 under sections 386, 170, 337-AI, 506, 34 PPC Police Station Sara-e-Saleh, District Haripur against the appellant for personal grudges and enmity. The appellant surrendered himself before the local police. The matter was patched up by the elders of the locality and after satisfaction of the complainant, appellant was declared innocent and vide order dated 12.10.2022 of learned Judicial Magistrate-I, Haripur, he was acquitted from the charges leveled against him. On 21.07.2022, the Superintendent of Police, FRP Hazara Region, Abbottabad issued charge sheet alongwith statement of allegations to the appellant that he spoiled the good image of the Police Department which was against the rules of a disciplined force. On 10.08.2022, he submitted his reply to the charge sheet and denied the allegations leveled against him. On 16.9.2022, the competent authority imposed major penalty of dismissal from service upon the appellant. Feeling aggrieved, he filed departmental appeal on 28.09.2022 but no order was passed on the said appeal; hence the instant service appeal.

3. Respondents were put on notice who submitted written reply. 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 was illegal, unlawful and not tenable in the eyes of law. He argued that no show cause notice was served upon the appellant nor he was associated with any enquiry. The appellant was not given opportunity of



personal hearing and he was condemned unheard. He stated that the whole proceedings were carried out in contravention to the rules and the order passed on the basis of such proceedings was liable to be set aside. 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 appellant was found an inefficient Police Officer and there were two bad entries at his credit. He further argued that the complainant of the FIR namely Syed Haris Gillani submitted a written complaint to local police against the appellant wherein he stated that he, alongwith his friends, was unnecessarily detained by the appellant and tortured physically and mentally and was released after taking Rs. 5330 as illegal gratification. He argued that proper departmental proceedings were initiated against the appellant. He was issued charge sheet alongwith summary of allegations and Mr. Azam Ali, DSP, HQrs, FRP Hazara was appointed as Enquiry Officer to probe into the matter. Reply to the charge sheet submitted by the appellant was found unsatisfactory. The Enquiry Officer submitted his finding report wherein the appellant was found guilty of the charges leveled against him and after fulfillment of all codal formalities, he was awarded major punishment of dismissal from service as per law and rules.


7. From the arguments and record presented before us, it transpires that the appellant, while serving as Constable in the Police Department, was nominated in FIR No. 292 dated 03.07.2022 U/S 386, 170/337AI-506/34/PPC, P.S Sarai Saleh, District Haripur and was put behind the bars. Mere FIR was not a guilt unless it was proved by the competent court of law. The respondents were required to place him under suspension in the light of CSR 194 and wait for the




outcome of trial in the court of law but it was not done and departmental proceedings were initiated against him on 21.07.2022 after which the impugned order of dismissal from service was issued on 16.09.2022. Record further indicated that the appellant was acquitted of all the charges vide order dated 12.10.2022 by the Judicial Magistrate-I, Haripur. His acquittal was not taken into consideration and he was punished. It had been held by the superior fora that all acquittals were certainly honourable. Nomination/involvement of the appellant in criminal case was the sole ground on which he was dismissed from service. The said ground subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service. In that respect we sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court 695.

8. In view of above, the appeal in hand is allowed and the impugned order dated 16.09.2022 is set aside and the appellant is reinstated into service with all back benefits. Cost shall follow the event. Consign.

9. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal this 24th day of July, 2024.*


(FAREEHA PAUL)
Member (E)
(Camp Court, Abbottabad)


(RASHIDA BANO)
Member (J)
(Camp Court, Abbottabad)

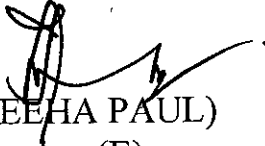
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24th July, 2024 01. Mr. Hamayun Khan, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the appeal in hand is allowed and the impugned order dated 16.09.2022 is set aside and the appellant is reinstated into service with all back benefits. Cost shall follow the event. Consign.

03. *Pronounced in open court at camp court, Abbottabad and given under our hands and seal of the Tribunal this 24th day of July, 2024.*


(FAREEHA PAUL)
Member (E)
(Camp Court, Abbottabad)


(RASHIDA BANO)
Member (J)
(Camp Court, Abbottabad)

Fazle Subhan PS