

ORDER

21.06.2024 1. Learned counsel for the appellant present. Mr. Asif Masood

Ali Shah, learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to set aside the impugned order with direction to conduct de-novo inquiry and to record statement of SHO, Moharrir and provide the opportunity of cross examination to the appellant upon all the witnesses and conclude the proceedings within sixty days after receipt of copy of this judgment. 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 21th day of June, 2024.*


(FARZHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

to the appellant upon all the witness within sixty days after receipt of copy of this judgment. Costs shall follow the event. Consign.

11. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 21th day of June, 2024.


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*M.Khan

officer and no opportunity of cross examination was provided to appellant upon inquiry officer too.

8. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of 'audi alteram partem' was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

9. Appellant was awarded major punishment of reduction into rank vide impugned order without fulfilling the mandatory and essential requirement of knowing the truth and providing opportunity of cross examination upon investigation officer, which is against the rules.

10. For what has been discussed above, we are unison to set aside the impugned order with direction to conduct de-novo inquiry and to record statement of SHO, Moharrir and provide the opportunity of cross examination



5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

6. Perusal of record reveals that appellant was posted as Incharge Police post Jhanda, Swabi, when he arrested an accused Ibrar S/o Gul Muhammad in-connection with murder of his wife alongwith 30 bore pistol on 03.11.2019 on the spot of crime which occurrence was reported vide case FIR No.1443 U/S 302/324/34 PPC of Police Station Swabi dated 03.11.2009. Appellant sealed the 30 bore pistol produced by the accused IbrarGul as weapon of offence, said pistol along with recovered empty shells from the spot sent to FSL for comparison and opinion, negative opinion/not matched opinion from FSL received. Upon which appellant was issued charge sheet and statement of allegations on 02.12.2019 with the allegations that he manipulated the pistol which resulted into negative opinion from FSL which favors the accused which speaks about inefficiency and lack of interest in official work by the appellant.

7. Appellant in reply has mentioned that he had handed over said pistol alongwith accused to SHO P.S Swabi on 03.11.2019 which he sealed on 04.11.2019 in Police Station, when he was summoned by SHO to Police Station for sealing it for purpose of sending it to FSL and handed it to Moharrir of Police Station namely Akhtar the one who onwards sent it to FSL. Appellant specifically mentioned that he had handed over pistol to SHO in unsealed condition which remained in his custody for one day. It was duty of inquiry officer to record statement of SHO and Moharrir, Akhtar Said for knowing truth and real culprit who changed the pistol, but perusal of inquiry report reveals that inquiry officer only recorded statement of investigation

1974 with the prayer copied as below:

“On acceptance of the instant appeal the impugned orders of the respondent No.3 & 4 dated 22.04.2020 and 13.02.2020 may be set aside and the penalty of forfeiture of 2 years of approved service may be declared as illegal and void and the appellant may kindly be exonerated from the penalty.”

2. Brief facts of the case are that appellant while posted as Incharge Police Post Jhanda, District Swabi on 03.11.2019 he arrested accused in a murder case and recovered one pistol as weapon of offence and handed over the accused alongwith weapon to the concerned SHO. The said pistol was sealed and sent to FSL for analysis. The FSL after examining the same given report in negative. In aftermath of the said incidence, the appellant was charge sheeted by respondent No.4 and inquiry was conducted by the department. Thereafter, appellant was awarded forfeiture of two years approved vide impugned order dated 13.02.2020. Feeling aggrieved, he filed departmental appeal 27.02.2020 which was dismissed vide order dated 22.04.2020. Then he filed review petition, which was not responded to, hence the instant service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.4678/2020

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

Mr. Jehad Ali Khan, Sub Inspector, (Presently posted as Head Constable at Police Lines, District Swabi.

... (Appellant)

VERSUS

1. Through Secretary to Government of Khyber Pakhtunkhwa, Home & Tribal Affairs, Civil Secretariat, Peshawar.
2. Inspector General of Police, Central Police Office, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Mardan Region-I, Mardan.
4. District Police Officer, Swabi.
5. District Account Officer, District Swabi.

... (Respondents)

Mr. Asad Zeb Khan
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....21.05.2020
Date of Hearing.....21.06.2024
Date of Decision.....21.06.2024

JUDGMENT

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

