

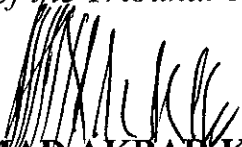
ORDER

24.06.2024 1. Learned counsel for the appellant present. Mr. Muhammad

Jan, District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to accept the instant service appeal by setting aside the impugned orders with all back benefits. The appellant is considered to have died during service, and his legal heirs are entitled to his 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 24th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)

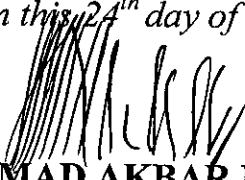

(RASHIDA BANO)
Member (J)

respondents were required to re-instate the appellant. Appellant was acquitted from the charges leveled against him in both the FIRs mentioned above.

9. It is important to note the appellant died during pendency of this service appeal on 13.09.2019, therefore, his legal heirs were impleaded as party. It is not out of place to mention here that if respondents followed the rules mentioned above, and reinstate the appellant after his acquittal from the charges levelled against him, then he will be in service on 13.09.2019 as the instant appeal was filed on 02.01.2021. Therefore, it will be in the interest of justice that the appellant be considered died during service because the only hurdle was his involvement in a criminal case, which was much removed before his death.

10. For what has been discussed above, we are unanimous to accept the instant service appeal by setting aside the impugned orders with all back benefits. The appellant is considered to have died during service, and his legal heirs are entitled to his back benefits. 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 24th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

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.

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 serving in respondent/department as Constable when on 23.04.2016 his brother Zakria Alam who was also employee of traffic police was fired upon by some unknown accused who lodged FIR No.432 dated 23.04.2016 U/S 324/427/34 PPC of Police Station Badaber. Appellant said brother was murdered by their opponents on 12.08.2016 which matter was reported vide FIR No.302/324/34 of Police Station, Badaber, which resulted into enmity. The appellant was falsely nominated in criminal case FIR No.54 dated 02.12.2017 U/S 302/324/34 of Police Station East Cantt and FIR No.846 U/S 302/324/34 of Police Station Badaber.

7. The appellant was suspended, charge sheet and statement of allegation was issued on the ground of his involvements in a criminal case mentioned above by appointing SDPO, Hayatabad inquiry officer on 27.02.2017 who after conducting inquiry submitted his report to authority. Authority issued impugned order dated 28.09.2017 vide which appellant was dismissed from service. So, appellant was proceeded against on the allegation of his involvement in a criminal case. It is admitted on record that brother of the appellant was murdered and there was also danger/threat

to the life of the appellant due to having blood fluid enmity due to which he was unable to perform his duties so absence of the appellant was not willful rather he was compelled by the circumstance to become absent.

8. Legally speaking respondents were required to suspend the appellant after his involvement in the criminal case and wait for final decision of the competent court of law but they without adopting such procedure as provided in the Police Rules, decided in haphazard manner the fate of departmental proceeding vide impugned order which is in-justice and against the rules. Appellant was acquitted from charges by the competent court of law. Police rules 1934 16(3) provided that;

"16.3. Action following on a judicial acquittal.-

(1) When a Police Officer has been tried and acquitted by a criminal Court he shall not be punished departmentally on the same charge or on a different charge based upon the evidence cited in the criminal case, whether actually led or not, unless:-

- (a) The criminal charge has failed on technical grounds; or***
- (b) In the opinion of the Court or of the Superintendent of Police the prosecution witnesses have been won over; or***
- (c) The court has held in its judgment that an offence was actually committed and that suspicion rests upon the Police officer concerned; or***
- (d) The evidence cited in the criminal case discloses facts unconnected with the charge before the Court which justify departmental proceedings on a different charge; or***
- (e) Additional evidence admissible under Rule 16.25 (1) in departmental proceedings is available.***

(2) Departmental proceedings admissible under sub-rule (1) may be instituted against lower subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of the Deputy Inspector-General of Police; and a police officer against whom such action is admissible shall not be deemed to have been honourably acquitted for the purpose of Rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I.

So, in the instant case the appellant was acquitted from the charges leveled against him in the criminal cases and main reason to proceed against the

appellant was his involvement in criminal cases which are no more in field, hence

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:

“It is therefore, humbly prayed that on acceptance of the instant appeal, the appellant may very graciously be reinstated into service his dismissal with full back benefits. Any other relief not specifically asked for may also graciously be extended in favour of the appellant in the circumstances of the case.”

2. Brief facts of the case are that appellant alongwith his two brothers namely Zikria Alam and Zar Ali served the police department under the control of respondents for 8/9 years with spotless record. That on 23.04.2016 one of brother of the appellant was shot by unknown persons due to which he was severely injured and the matter was reported to the local police of P.S Badaber vide FIR No. 432 dated 23.04.2016. That on 12.08.2016 brother of the appellant was murdered by some unknown persons, and the matter was reported to P.S Badaber vide FIR No. 846 dated 12.08.2016. Due to the above incident appellant remained absent from duty, consequently departmental proceedings were initiated against the appellant which culminated into dismissal from service vide order dated 28.09.2017. Feeling aggrieved, appellant filed departmental appeal, which was dismissed vide order dated 03.12.2018, hence the present 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



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.15/2019

BEFORE: MRS. RASHIDA BANO ...MEMBER(J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Mr. Fakhr-e-Alam S/o Noor Sahib R/o SurizaiBala, Tehsil and District
Peshawar (FC No.1511).

... (Appellant)

- HaleemaBibi
- M. Musawar
- Maryam Bibi
- KiranBibi

... (Legal heirs)

VERSUS

1. The Inspector General of Police, IG Office, Peshawar.
2. The Capital City Police Officer, Peshawar.
3. Superintendent Police Head Quarter, Peshawar.
4. The ASP Rural Hayatabad, Inquiry Office.
5. Mr. Habibullah Khan, ASP Hashtnagri, Peshawar.
6. The SDPO, Hayatabad, Peshawar.

... (Respondents)

Mr. Shaukat Ali
Advocate

... For legal heirs

Mr. AsifMasood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....02.01.2019

Date of Hearing.....24.06.2024

Date of Decision.....24.06.2024



JUDGMENT