

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.3520/2021

BEFORE: MRS. RASHIDABANO --- Member (J)
MISS FAREEHA PAUL --- Member (E)

Mr. Murad Khan, Ex-Constable No.2041 S/o Muqaddar Shah R/o Akbar Pura Pabbi District Nowshera.

... (Appellant)

VERSUS

1. Superintendent of Police Headquarters, Peshawar.
2. Capital City Police Officer, Peshawar.

... (Respondents)

Roeeda Khan
Advocate

--- For appellant

Muhammad Jan
District Attorney

--- For respondents

Date of Institution.....01.03.2021
Date of Hearing.....14.06.2024
Date of Decision.....14.06.2024

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 under;

“On acceptance of appeal both the impugned order dated 20.01.2021 & 24.02.2021 may kindly be set aside and the appellant may kindly be reinstated in service along with all back benefits. Any other remedy which this august Tribunal deems fit that may also be granted in favor of appellant.”

2. Brief facts of the case are that the appellant was initially appointed as Constable in police Department on 20.12.1988 and since his appointment he



served the department upto the entire satisfaction of his superiors. During posting at District Peshawar, a case FIR No. 246 dated 19.08.2020 U/S 302/324/148/149 PPC at Police Station Akbar Pura was lodged against the appellant. Departmental proceedings were initiated which culminated into dismissal from service vide impugned order dated 20.01.2021. Feeling aggrieved, he filed departmental appeal which was rejected vide order dated 24.02.2021, 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 defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellants and learned 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 District Attorney controverted the same by supporting the impugned order(s).

6. Perusal of record reveals that appellant has been initially appointed as Constable in Police Department on 20.12.1988. A case FIR No.246 dated 19.08.2020 U/S 302/324/148/149 PPC at Police Station Akbar Pura, has been lodged against the appellant. Respondent/department initiated disciplinary proceeding against the appellant by issuing charge sheet and statement of allegation on 11.09.2020 due to his involvement in the criminal case bearing FIR No.246 U/S 302/324/148/149 dated 19.08.2020 of Police Station Akbar Pura. SDPO Warsak was appointed as inquiry officer, SDPO after completion of inquiry submitted his report on 23.08.2020 to the authority, wherein

herecommended immediate suspension, because appellant was on bail before arrest with further observation that criminal case is in process of investigation which after investigation will have to put in court and competent court of law will have to determine involvement of the appellant in criminal case. Therefore, if appellant will be convicted by the court of law, he will be awarded major punishment. Authority instead of waiting for decision of criminal case, issued final show cause notice & vide impugned order dated 20.1.2021 awarded major penalty of dismissal from service.

7. Appellant in his reply produced daily diary No.35 dated 19.08.2020 to inquiry officer in accordance with appellant at 7:45 AM come from Police Station Wapda to Police Station East Cantt and departed for Police Hospital to join Hashmat Ali ASI. He also produced Muhammad Israr, Police Station East Cantt, who also supported the contents of Daily Diary 35, which was scribed by him. Similarly, Hashmat Ali ASI in his statement mentioned that appellant join him for Polio duty on 7:50 AM and remained with him till 9:00PM on the day of occurrence. Inquiry Officer also mentioned in his report about this fact in Daily Diary No.35, it is mentioned that appellant came from Police Station Wapda but inquiry officer did not bother to confirm this fact that when appellant left Police Station Wapda for Police Station East Cantt.

8. Appellant was proceeded against departmentally solely on the ground of his involvement in criminal case in which he is now acquitted vide judgment order dated 13.03.2024 by the court of Arbab Sohail Hamid ASJ-I Tehsil Pabbi, Nowshera. So, in accordance with inquiry officer report authority will have to wait for decision of criminal court of law and keep

appellant under suspension under the rules but authority in hurry issued impugned order which is against the law.

9. Otherwise too, under rules when appellant is acquitted from the charges by the court of law on the basis of which he was departmentally proceeded against then he will have to be reinstated. Under rule 16.3 of Police Rules 1975 which are reproduced here;

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 charge or on a different charge based upon the evidence cited in the criminal case we 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.

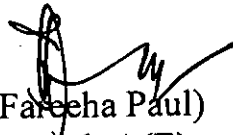
(2) Departmental proceedings admissible under sub-rule (1) may be instituted against lower subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of the Deputy Inspector-General of Police; and a police officer against whom such action is admissible shall not be deemed to have been honorably acquitted



*for the purpose of Rule 7.3 of the Civil Services Rules (Punjab),
Volume I, Part I.*

9. For what has been discussed above, the appeal in hand is accepted as prayed for. Costs shall follow the event. Consign.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 14th day of June, 2024.*



(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

ORDER

14.06.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Qaisro Khan, Inspector for the respondents present.
2. Vide our detailed judgment of today placed on file, the appeal in hand is accepted as prayed for. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 14th day of June, 2024.*


(Faezha Paul)
Member (E)


(Rashida Bano)
Member (J)

*M.Khan