

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.5818/2021

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

**Sana Ullah, Ex-Constable 988 S/o Bakhtiar Ali R/o Zakhi Kehna, Akbar Pura, Nowshera.** (Appellant)

**VERSUS**

1. District Police Officer, Nowshera,
2. Regional Police Officer, Mardan

... (Respondents)

Roeeda Khan  
Advocate

... For appellant

Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

Date of Institution.....07.06.2021  
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 below:

**“On acceptance of this service appeal both the impugned orders dated 30.09.2020 & 31.05.2021 may very kindly be set aside and the appellant may kindly be reinstated into his service alongwith all back benefits.”**

2. Brief facts of the case are that appellant was appointed as Constable in respondent department and performed his duty upto the entire satisfaction



of his superiors. Appellant while posted at District Police Line Nowshera a case FIR No. 246 dated 19.08.2020 was lodge against him. Departmental proceedings were initiated against the him which resulted into dismissal from service vide impugned order dated 30.09.2020 which was communicated to the appellant to the appellant 10.03.2021. Feeling aggrieved, appellant filed departmental on 29.03.2021 which was rejected vide order dated 31.05.2021, hence the present service appeal.

3. Respondents were put on notice who submitted written reply on the appeal. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

4. The learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the impugned orders passed by the respondents are against the law, facts and norms of justice hence liable to be set aside. He submitted no regular inquiry has been conducted by the respondents and no opportunity of personal hearing has been provided to the appellant and he was condemned unheard. He submitted that no charge sheet and statement of allegations has been issued or communicated to the appellant. He further submitted that no statement of witness has been recorded by the inquiry office and there is no proof of involvement in the said criminal case against the appellant by the respondents. He requested that instant appeal might be accepted as prayed for.


5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further



contended that appellant while posted at Police Lines Nowshera, was directly charged in a criminal case registered vide FIR No. 246 dated 19.08.2020. After commission of offence, the appellant went into hiding in order to evade his lawful arrest, hence, he was recommended for taking ex-parte action by the enquiry officer. He further contended that before awarding punishment, all legal and codal formalities were fulfilled. He requested for dismissal of the instant service appeal.

6. Perusal of record reveals that appellant was appointed as Constable in respondent department. While posted at District Police Line Nowshera case FIR No.246 dated 19.08.2020 U/S 302/324/148/149 PPC at Police Station Akbarpura has been lodged against the appellant. The appellant has been bail out on 10.03.2021, when he went for joining his duties, he was informed that respondent department without fulfilling codal formalities and without providing opportunity of personal hearing to the appellant, dismissed the appellant from service on 30.09.2020 on the ground of involvement in the said case.

7. Perusal of inquiry report reveals that respondent departments initiated disciplinary proceeding against the appellant very quickly as appellant was nominated in a criminal case bearing FIR No.246 U/S 302/324/148/149 PPC P.S Akbar Pura on 19.08.2020 and order of inquiry along with charge sheet and statement of allegations was issued on 25.08.2020 within one week which show the malafide intention of the respondent/department. Respondents under the rules were required to

 suspend service of the appellant after getting information about

involvement of the appellant but they instead of his suspension straight away proceeded against him without waiting for outcome of criminal case.

8. More interestingly entire inquiry proceedings were concluded within one month ex-parte without providing any opportunity to the appellant to defend himself before the inquiry officer or court of law. After submission of inquiry, impugned order was passed on 30.09.2020 on 4<sup>th</sup> day of nomination of the appellant in the criminal case. One cannot understand the compelling circumstance of this haphazardness on the part of respondent/department.

***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***

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*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, we are unison to accept instant service appeal in above mentioned terms. The intervening period of dismissal till this judgment is treated as leave of the kind due and absence period be treated as leave without pay. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 14<sup>th</sup> 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 for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to accept instant service appeal. The intervening period of dismissal from service till the judgment is treated as leave of the kind due and absence period be treated as leave without pay. 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 14<sup>th</sup> day of June, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemullah