

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No. 1213/2022

Date of presentation of Appeal.....05.08.2022
Date of Hearing.....25.09.2024
Date of Decision.....27.09.2024

Ibrahim (ASI) S/o Khiyal Baz R/o Ghundi, Tehsil Jamrud District Khyber.**Appellant**

Versus

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar.
2. Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. District Police Officer, District Khyber.

.....(**Respondents**)

Present:

Mr. Zahanat Ullah, Advocate.....For appellant
Mr. Muhammad Jan, District Attorney.....For respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as alleged by the appellant in his memorandum of appeal, are that he was initially appointed as a Khasadar and subsequently promoted to the rank of Assistant Sub-Inspector (ASI) at District Khyber following the merger of the Federally Administered Tribal Areas (FATA) into Khyber Pakhtunkhwa. However, on 24th September 2021, he was dismissed from service on the allegations of alleged involvement in drug peddling and other illegal activities. Feeling aggrieved, he filed a departmental appeal against the dismissal order, which was rejected on 1st July 2022, hence the filed the instant appeal before this Tribunal for redressal of his grievance.

27/09/2024.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. The learned counsel for the appellant contended that the appellant's dismissal contravened the fundamental principle of natural justice, as he was not afforded an opportunity to be heard or defend against the allegations leveled against him. He next contended that the dismissal was based solely on unspecified reports and allegations of drug involvement, which lacked evidential support, therefore, in absence of a formal inquiry or a documented basis for such allegations rendered the dismissal arbitrary. He further contended that the actions of the respondents demonstrated a pattern of discrimination against the appellant, who faithfully served in his capacity, therefore, his dismissal order was motivated by ulterior motives and was not in the public interest, thus rendering it capricious and void ab-initio. He next argued that the dismissal order of the appellant was not passed in compliance with the law and rules. In the last, he argued that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, the learned District Attorney for the respondents contended that the respondents relied on a confidential report substantiating the claims that the appellant was involved in drug peddling and other illegal activities. He next contended that charge sheet was issued to the appellant and the District Police Officer (DPO) of Khyber was tasked with overseeing the inquiry process and the inquiry officer, after a thorough investigation, supported the charges against the appellant, which justified the decision to dismiss him. He further contended that further inquiries conducted by the Superintendent of Police (SP) Investigation corroborated

27/09/2024

the initial findings, supporting the recommendation for major punishment against the appellant. He next argued that the actions taken by respondents against the appellant were in accordance with their authority to dismiss employees found guilty of misconduct, stressing that the dismissal was justified based on credible evidence. He further argued that since the inquiry procedure was duly followed and the appellant's appeal for reinstatement had been rejected after a detailed review, therefore, the decision of dismissal may be upheld. In the last, he argued that the appeal in hand may be dismissed with cost being meritless.

5. Arguments of learned counsel for the parties and have already been heard and record perused.

6. The perusal of the case file shows that the appellant had served as a Khasadar and subsequently as an Assistant Sub-Inspector (ASI) in District Khyber following the merger of FATA into Khyber Pakhtunkhwa. However, on September 24, 2021, the appellant was dismissed from service on the allegations of involvement in drug peddling and other illegal activities, as purportedly reported by confidential sources. However, the case file illumination reveals that the authority failed to provide the appellant with a foundational tenet of justice—clear disclosure of the evidence against him. It was imperative for the authorities to produce cogent ^{evidence} in support of the allegations, mere on the source report, civil servant could be subjected to punitive actions without transparency regarding the allegations. The necessity for procedural rigor and the presumption of innocence until proven guilty were underscored by several judgments of Supreme Court of Pakistan, reported as PLD 2008 SC 451 and 1997 SCMR 1543, which emphasized the requirement of conducting a formal inquiry

27/09/2024


before concluding with disciplinary measures. The evidence manifestly demonstrated that no formal inquiry occurred, neither was the appellant accorded a fair opportunity to contest the allegations preceding his dismissal. The failure to issue final show-cause notice further compounded this procedural oversight, detracting from the appellant's ability to defend his position actively. It is the contention of the respondents that the inquiry was conducted against the appellant and he was found guilty of the charges. However, it was discernible that the inquiry process lacked compliance with established procedural protocols, particularly concerning the presentation and verification of evidence. The obscure nature of the inquiry officer's observations and the confidentiality of the source reports engendered credible doubts regarding the inquiry's integrity and the veracity of the ensuing dismissal order. The appellant's abrupt dismissal contravened Articles 4 and 10 of the Constitution of the Islamic Republic of Pakistan, 1973, which enshrine rights to due process and protection from unequal treatment. Judicial precedents affirm that civil servants should not be dismissed based on baseless claims or absent procedural due diligence, necessitating that respondents operate within constitutional and legal bounds. Moreover, the appellant's experience indicated a discriminatory application of rules, hinting at possible ulterior motives behind his dismissal. The unverified drug peddling allegation, devoid of a thorough investigation, suggested a rash decision potentially shaped by external pressures as opposed to substantive evidence. Given the procedural breaches and the severe impact on the appellant's rights, it is determined that the dismissal order dated September 24, 2021, lacked legal validity.

27/09/2024

The fundamental right of the appellant to a fair hearing was grossly neglected, rendering the dismissal order unjustifiable and unlawful.

7. In light of the above findings, the impugned orders are set-aside and the appellant is reinstated in service with the direction to the respondents to conduct de novo inquiry within a period of 03 months from the date of receipt of copy of this judgment. It is also directed that the inquiry shall be conducted afresh, ensuring adherence to due process and affording the appellant all rights to representation and defense as guaranteed under the law. The issue of back benefits of the appellant shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.


8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 27th day of September, 2024.*



AURANGZEB KHATTAK 27.09.2024.
Member (Judicial)


RASHIDA BANO
Member (Judicial)

ORDER
27th Sept, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments have already been heard and record perused.
2. Vide our judgment of today placed on file, the impugned orders are set-aside and the appellant is reinstated in service with the direction to the respondents to conduct de novo inquiry within a period of 03 months from the date of receipt of copy of this judgment. It is also directed that the inquiry shall be conducted afresh, ensuring adherence to due process and affording the appellant all rights to representation and defense as guaranteed under the law. The issue of back benefits of the appellant shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 27th day of September, 2024.*


(Rashida Bano)
Member (Judicial)


(Aurangzeb Khattak) 27th 2024.
Member (Judicial)