

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT ABBOTTABAD

Service Appeal No.942/2022

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

Mr. Gul Afzal Ex-Constable No. 340, District Police Abbottbad R/O
Tarhana Tehsil & District Abbottabad.

.... (Appellant)

VERSUS

1. District Police Officer, Abbottabad.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Muhammad AsalamTanoli
Advocate`

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

Date of Institution.....13.06.2022
Date of Hearing.....25.07.2024
Date of Decision.....25.07.2024

CONSOLIDATED JUDGMENT

RASHIDA BANO, MEMBER (J): The instant appeals instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of instant amended service appeal, the orders dated 23.02.2022 and 21.09.2022 of respondent No. 1 and 2 may graciously be set aside and appellant be reinstated in service from the date of dismissal with all back benefits.”

2. Through this single judgment we intend to dispose of instant service appeal as well as connected Service Appeal No.941/22 titled “Saqib Ali



Vs. Police” as in both appeals common question of law and facts are involved.

3. Brief facts of the case are that appellants were inducted in Police Department in the year 2001 and since then they had been performing their duties; while posted in the Investigation Wing at Police Station Mangal, Abbottabad, one Khalid lodged FIR No. 649 dated 12-12-2021 u/s-418/420/468/471 RFC read with S-118-1(c)/119(b) Police Act, 2017 regarding an occurrence allegedly took place on 23-11-2021 at 13:00 hours against unknown persons, wherein, appellants were neither charged nor nominated; that after 9 days, the complainant charged the appellants for the offence in supplementary statement recorded under section 164Cr.PC, however in his statements complainant never stated that he paid any amount to appellants rather he stated that the alleged amount was paid to "Tahir and Faiz" and even, did not assign any role to the appellants. The complainant also stated that he could not identify the police officials and even no identification parade was conducted by the inquiry officer to authenticate identification of appellant. The appellants were issued charge sheets, which were duly replied and the allegations leveled therein were flatly denied. Thereafter final show cause notices were issued on 07-02-2022 which were also replied and the allegations mentioned therein were denied. That vide impugned order dated 22.02.2022, the appellants were dismissed from service. Feeling aggrieved, they filed departmental appeals on 01.03.2022, but the same was not responded, hence, the instant service appeals.

4. On receipt of the appeals 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 appellants.

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

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

7. Perusal of record reveals that appellants were inducted in District Police Abbottabad in the year 2011 and since then they have been performing their duties with devotion & dedication. During performing their duties, one Khalid lodged an FIR No.649 dated 12.12.2021 U/S 418/420/468/471 PPC read with S-118-1(c)/119(b) Police Act, 2017 regarding an occurrence that allegedly took place on 23.11.2021 at 13:00 hours against unknown persons. Subsequently, after 9 days the complainant falsely charged the appellants for the offence in supplementary statement recorded U/S 164 Cr.PC, however in statements complainant never stated that he paid any amount to appellants rather stated that the alleged amount was paid to "Tahir and Fiaz" and even did not assign any role to the appellants. In his statement the complainant also stated that he could not identify the police officials and even no identification parade was conducted by the I.O to authenticate identification of culprits/appellants.

Appellants were charge sheeted with the allegations which read as under;

"2) You appear to be guilty of misconduct under Police Disciplinary Rules 1975 (amended 2014) and have rendered yourself liable to all

or any of penalties specified in the said Police Disciplinary Rules.



3) *You are therefore, directed to submit your written defense within seven days on the receipt of this charge sheet to the inquiry officer.*

4) *Your written defense, if any shall reach the enquiry officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall follow against you.*

5) *Intimate whether you desire to be heard in person or otherwise*

6) *A statement of allegations is enclosed."*

8. Appellants denied the charges and contended that they are innocent. Actually appellants were charged in the same allegation which is substance of FIR NO.649 dated 12.12.2021 registered U/S 419, 420, 468 and 471 PPC at Police Station Mangal, Complainant Mr. Khalid who submitted application against the appellants did not opted to appear before the inquiry officer to record his statement in support of his allegation, which constituted misconduct at the part of appellants as is alleged by respondent/department.

9. It is also pertinent to mention here that complainant Mr. Khalid even in his statement recorded in trial court and before Magistrate stated that he could not identify the Police Official, who were with private accused. When he was unable to identify the police official then on what basis appellants were charged in the criminal case and disciplinary proceeding initiated against the appellants, which resulted into the dismissal from service vide impugned order dated 14.12.2021. Moreover, appellants were acquitted from the charges leveled against them vide FIR NO.649 mentioned above vide order dated 10.06.2023 passed by the Judicial Magistrate-1 Abbottabad U/S 249-A CrPC.

10. So, the very reason due to which appellants were issued with charge sheet is no more reason in filed. Police Rules Act, 1934, Rules 16.3 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 honourably acquitted for the


purpose of Rule 7.3 of the Civil Services Rules (Punjab), Volume I,


Part I.

Under Police Rules 16.3 when a police official was acquitted from the charges on the basis of which he was issued with charge sheet, he may be reinstated into service.

11. For what has been discussed above, we are unison to partially accept the instant service appeals, reinstate the appellants into service, while intervening period (from dismissal till date) will be treated as leave without pay. Costs shall follow the event. Consign.

12. *Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 25th day of July, 2024.*


(FARĒEHA PAUL)
Member (E)
Camp Court, Abbottabad


(RASHIDA BANO)
Member (J)
Camp Court, Abbottabad

*M.KHAN

30th May, 2024

1. Learned counsel for the appellant and Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Being not prepared, learned counsel for the appellant requested for adjournment. Adjournd. To come up for arguments on 25.07.2024 before D.B at Camp Court, Abbottabad. P.P given to the parties.



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman

*Mutazem Shah *

ORDER

25.07.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney for respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to partially accept the instant service appeal, reinstate the appellant into service, while intervening period (from dismissal till date) will be treated as leave without pay. Costs shall follow the event. Consign.

3. *Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 25th day of July, 2024.*



(FAREEHA PAUL)
Member (E)
Camp Court, Abbottabad



(RASHIDA BANO)
Member (J)
Camp Court, Abbottabad

*M.KHAN