

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN  
MISS FAREEHA PAUL ... MEMBER(E)

Service Appeal No. 327/2024

Suhbat Khan, Ex-IHC No. 3436, Elite Force, Mardan.

.....(Appellant)

Versus

The Deputy Commandant, Elite Force Khyber Pakhtunkhwa, Peshawar.  
..... (Respondent)

Mr. Taimur Ali Khan,  
Advocate

... For appellant

Mr. Naseerud Din Shah,  
Assistant Advocate General

... For respondent

Date of Institution.....28.02.2024

Date of Hearing.....10.10.2024

Date of Decision..... 10.10.2024

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 10.11.2023, whereby the appellant was dismissed from service. It has been prayed that on acceptance of the appeal, the impugned order dated 10.11.2023 might be set aside and the appellant be reinstated into service with all back and consequential benefits, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts, as given in the memorandum of appeal, are that the appellant was appointed in the respondent department as Constable in the year



2007 and completed all his due trainings and was promoted to the rank of IHC. An anonymous complaint was filed against him, alongwith Naeem IHC and Ismail F.C, in which it was stated that the official, with the connivance of his high ups, posted constables on their choice of place of postings and getting them long leave and short leave and in lieu of that he was taking illegal gratification. Charge sheet, alongwith statement of allegations, was served upon the appellant with the charges that, while posted as Gunner to SP/Elite Force Mardan Region, he remained involved in corrupt practices and it was established during the secret probe that he had been receiving illegal gratification from the constables of Elite Force Mardan Region in lieu of getting them short/long leave. The appellant submitted detailed reply to the charge sheet in which he denied the allegations and clearly mentioned that he had remained only 04 months with S.P/Elite Force and was not involved in any corrupt practices and also mentioned that the long leave and short leave was the prerogative of the Deputy Commandant and S.P. Range and he had no concern with the short/long leave. Mr. Atta Muhammad Khan, S.P Peshawar Region was nominated inquiry officer who was biased towards the appellant, therefore, the appellant requested to Deputy Commandant Elite Force KP for transfer of inquiry officer, who nominated an additional inquiry officer, Mr. Ijaz Abazai, DSP Headquarter, Elite Force, Peshawar. The inquiry committee conducted the inquiry in which statements of different officials were recorded in which they clearly mentioned that no one had demanded illegal gratification from them. The appellant had not been afforded opportunity of cross examination of those officials and the inquiry




committee found him guilty. He was dismissed from service vide impugned order dated 10.11.2023. Feeling aggrieved, he filed departmental appeal on 16.11.2023, which was not responded within the statutory period of ninety days; hence the instant service appeal.

03. Respondents were put on notice who submitted written reply/comments. We heard the learned counsel for the appellant and learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

04. Learned counsel for the appellant, after presenting the case in detail, argued that no proper and regular inquiry was conducted against the appellant as those officials who had recorded statements against him were not cross-examined by him. He argued that after conducting the inquiry, no show cause notice was served upon the appellant and without affording opportunity of personal hearing, he was dismissed from service. He requested that the appeal might be accepted as prayed for.

05. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that charge sheet alongwith statement of allegations was served upon the appellant on the basis of anonymous complaint. Proper enquiry was conducted and the allegations were proved against him beyond any shadow of doubt and after observing all the codal formalities, he was dismissed from service. He requested that the appeal might be dismissed.

06. From the arguments and record presented before us, it is clear that the appellant while serving as IHC in the respondent department was proceeded



against departmentally and dismissed from service vide order dated 13.11.2023. A departmental inquiry was conducted against him based on a charge sheet, according to which, he, while posted as Gunner to the SP Elite Force Mardan, remained involved in corrupt practices. It was further stated that during secret probe, it was established that he was involved in illegal gratification from the constables of Mardan Region of Elite Force in lieu of getting them short/long leave. The inquiry report presented before us at page-14 of the appeal showed that statements of certain officials were recorded and based on those statements, the Inquiry Committee gave its findings and conclusion. One glaring point that was missing in the inquiry report was that no opportunity of cross examination was provided to the appellant. In addition to that no show cause notice was issued by the competent authority before imposing the major penalty of dismissal from service and the same fact had also been admitted by the respondent in his reply.


07. In view of the above discussion, it is clear that the requirements of fair trial have not been fulfilled in the case in hand and the appellant was dismissed from service without fulfillment of the legal obligations. The case is, therefore, referred back to the respondent department to conduct a denovo inquiry by fully associating the appellant in the proceedings and providing him opportunity of cross examination and fulfillment all the legal obligations of a fair trial. The appellant is reinstated into service for the purpose of denovo inquiry. The matter regarding back benefits is subject to the outcome of denovo inquiry. The process of denovo inquiry shall be completed within



sixty days of the receipt of copy of this judgment. Cost shall follow the event.

Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 10<sup>th</sup> day of October, 2024.*

  
(FARNEHA PAUL)  
Member(E)

  
(KALIM ARSHAD KHAN)  
Chairman

\*Fazle Subhan, P.S\*

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10.10.2024 01. Mr. Taimur Ali Khan, Advocate for the appellant present. Mr. Naseerud Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, it is clear that the requirements of fair trial have not been fulfilled in the case in hand and the appellant was dismissed from service without fulfillment of the legal obligations. The case is, therefore, referred back to the respondent department to conduct a denovo inquiry by fully associating the appellant in the proceedings and providing him opportunity of cross examination and fulfillment all the legal obligations of a fair trial. The appellant is reinstated into service for the purpose of denovo inquiry. The matter regarding back benefits is subject to the outcome of denovo inquiry. The process of denovo inquiry shall be completed within sixty days of the receipt of copy of this judgment. Cost shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 10<sup>th</sup> day of October, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(KALIM ARSHAD KHAN)  
Chairman