

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

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

**Service Appeal No. 5910/2021**

Date of presentation of Appeal.....08.06.2021  
Date of Hearing.....25.09.2024  
Date of Decision.....25.09.2024

**Constable Atif Ullah**, No. 4127 Moharar Investigation P/S Pharipura,  
Peshawar. ....**Appellant**

Versus

1. Government of Khyber Pakhtunkhwa through Inspector General of Police KP, Central Police Office, Peshawar.  
2. Additional Inspector General of Police Peshawar.  
3. Deputy Inspector General of Police Peshawar.  
4. Deputy Superintendent of Police Inquiry Central Police Office Peshawar.  
5. The Capital City Police Officer, Headquarter Central Police Lines, Peshawar.  
6. SSP Investigation, Headquarter Central Police Lines, Peshawar.  
.....(**Respondents**)

Present:

Mr. Munsif Saeed, 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 appointed as constable in the Police department. Disciplinary action was initiated against him on the allegations that he while serving as Moharar Investigation at police station Paharipura, the case file of FIR No. 367 (dated 13.05.2014, under sections 387 PPC and 7 ATA) went missing. The appellant was subjected to a major punishment of time

scale from the higher stage to lower stage in the same time scale of pay vide order dated 18/02/2021. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 26/05/2021. The appellant has now approached this Tribunal through filing of instant appeal for redressal of his grievance.

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 has consistently performed his duties with dedication, arguing that he should not be penalized for a single incident where he claims no wrongdoing occurred. He next contended that the respondents failed to conduct a fair inquiry. He further contended the statement of allegations was not adequately presented and the procedural guidelines set forth for such departmental inquiries were not followed. He also contended that the disciplinary actions taken against him were discriminatory as other officials involved in the same incident received lesser punishments, suggesting that the appellant has been unfairly targeted as a scapegoat to protect others. He next argued that the appellant was not given a fair opportunity to present his defense during the inquiry proceedings. He further argued that the procedures followed by the respondents violated Articles 4 and 25 of the Constitution of Pakistan, which guarantee the right to a fair trial and equal treatment under the law. He also argued that the inquiry conducted against the appellant was flawed since no substantive evidence was presented to establish his guilt in the purported

  
25/09/2024.

loss of the case file. In the last, he argued that the appeal in hand may be accepted as prayed for.

4. On the other hand, the learned District Attorney for the respondents contended that the appellant has a record that includes seven bad entries, which questions his overall integrity and fitness for the role of constable. He next contended that as Moharrer Investigation, the appellant was responsible for the safe custody of the criminal case file, therefore, failure to secure the file constitutes gross negligence and misconduct. He further contended that the appellant issued a charge sheet detailing the allegations, a fair inquiry was conducted and the appellant was given ample opportunity to present his case. He also contended that the inquiry officer conducted a detailed investigation, finding the appellant guilty based on the evidence presented. He next argued that a thorough probe was conducted and that three separate departmental inquiries were completed, all of which found the appellant culpable of the charges. He further argued that before imposing the major punishment, the competent authority issued a final show cause notice to the appellant, to which the appellant provided an unsatisfactory response, further justifying the penalty. He also argued that the punishment was not only justified but also in accordance with police regulations and departmental rules, asserting that no constitutional violations occurred during the disciplinary proceedings. In the last, he argued that the appeal in hand may be dismissed with cost.

*Handwritten signature and date: 25/09/2024.*

5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.

6. The appellant has submitted the present appeal against the major punishment imposed on him vide order dated 18.02.2021 due to alleged negligence while performing his duties as a Moharrar Investigation (MI) at Paharipura Police Station. He was reported to have responsible for missing of the case file of FIR No. 367, dated 13.05.2014. The respondents conducted three separate departmental inquiries into the allegations, each finding the appellant responsible for the charges brought forth. As the Moharrar Investigation (MI) at Paharipura Police Station, the appellant bore direct responsibility for the secure custody of case files. The loss of the case file of FIR No. 367, which involves serious charges, exemplifies a substantial breach of the duties associated with the appellant's position. The appellant's failure to ensure adequate safeguards for critical documents constitutes gross negligence. In positions of public service, especially within law enforcement, the expectation for custodial vigilance cannot be overstated. In an effort to shield himself from accountability, he has taken the stance that the case file in question was handed over to DFC Shakeeb on October 28, 2014, for presentation before the Peshawar High Court, as requested. However, perusal of the court records reveal that the aforementioned case file was never requisitioned by the court. This discrepancy raises serious questions about the truthfulness of the appellant's assertions and indicates a possible malicious intent to mislead and evade responsibility.

*25/09/2024*

7. Prior to the imposition of the major penalty, the competent authority issued a final show-cause notice to the appellant, allowing him an opportunity to articulate a defense against the charges. However, the appellant's reply was found unsatisfactory by the inquiry officer, highlighting the sufficiency of due process. This procedural step is essential in administrative justice, as it allows for the consideration of an individual's perspective before punitive measures are enacted. This element of the inquiry fulfilled the requirement of providing the appellant with a fair chance to contest the charges against him.

8. Furthermore, the history of the appellant's service record reveals that seven instances of misconduct have already been recorded. This history is significant as it reflects a pattern of behavior that calls into question the appellant's integrity and overall fitness for his role as a constable. Maintaining public trust is essential for law enforcement and an unsatisfactory service record undermines this trust. The cumulative nature of these entries demonstrates a failure to comply with the expected standards of conduct associated with the duties of a constable, thereby justifying scrutiny of the appellant's actions in the current case.


Regarding the appellant's claims of discrimination, the differential treatment between officials in similar circumstances is not evidence of discriminatory practices but rather a reflection of the varying degrees of culpability in each case. Therefore, we dismiss the assertion that the appellant was unfairly singled out, reaffirming that the disciplinary actions taken were appropriate and non-discriminatory.


*25/09/2024*

9. The impugned order dated 18.02.2021, which resulted in the appellant's major penalty of time scale from higher stage to lower stage in the same time scale of pay, raises concerns regarding compliance with Fundamental Rule (F.R.) 29. This rule mandates that when a government servant faces reduction in grade or post due to misconduct or inefficiency, the authority must clearly articulate the duration of such a reduction. In the present case, the order dated 18.02.2021 did not include a specific duration for the demotion, which is essential for ensuring that individuals comprehend the length of any sanctions imposed.

10. In view of the above, we partially accept the appeal by modifying the impugned order dated 18.02.2021, to the extent that the major penalty of time scale from higher stage to lower stage in the same time scale of pay will be effective for five years. Parties are left to bear their own costs. File be consigned to the record room.

11. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 25<sup>th</sup> day of September, 2024.*

  
AURANGZEB KHATTAK 25/09/2024.  
Member (Judicial)

  
RASHIDA BANO  
Member (Judicial)

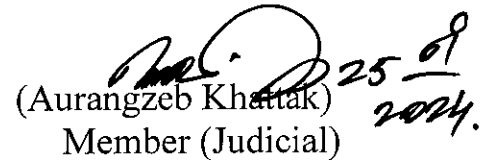
**ORDER**

25<sup>th</sup> Sept, 2024

1. Appellant alongwith his counsel present. Mr. Muhammad Raziq, Head Constable alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, we partially accept the appeal by modifying the impugned order dated 18.02.2021 to the extent that the major penalty of time scale from higher stage to lower stage in the same time scale of pay will be effective for five years. 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 25<sup>th</sup> day of September, 2024.*



(Rashida Bano)  
Member (Judicial)



(Aurangzeb Khattak)  
Member (Judicial)