

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 9617/2020

Date of presentation of Appeal.....30.07.2020
Date of Hearing.....26.09.2024
Date of Decision.....26.09.2024

Humayun Khan, Sub-Inspector MR/30, R/O Village Kalu Khan,
Tehsil Razar, District Swabi.....**Appellant**

Versus

1. The Inspector General of Police, Police Lines, Opposite CM House, Khyber Pakhtunkhwa, Peshawar.
 2. Capital City Police Officer, Police Lines, Secretariat Road, Peshawar, Khyber Pakhtunkhwa.
 3. Senior Superintendent of Police, Operations, Police Lines, Secretariat Road, Peshawar, Khyber Pakhtunkhwa.
-(**Respondents**)

Present:

Mr. Fazal Shah Mohmand, 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 joined the police force in 2009. He while serving as SHO at PS Tatara, two Constables Majid No. 5668 and Luqman No. 2739, were transferred there who reported for duty on January 23, 2020. However, they were absent without prior permission from February 19, 2020. The matter of their absence was entered in Daily Dairy No. 32, which was promptly communicated to the appropriate superior officer. A charge sheet was issued against him, on the following allegations:-

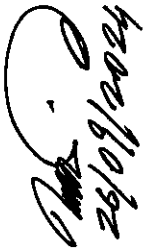
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- i) You while posted as SHO PS Tatara were allegedly involved in corrupt practices and mixed up with criminal elements/drug peddlers.
- ii) Your gunmen Majid No. 5668 and Luqman No. 2739 used to apprehend bad characters/record holders/suspects on your behest different places without bringing them on record and after minting illegal gratification from them in lieu of their release, they would set free the detainees.
- iii) Your performance with regard to working out pending untraced cases, curbing street crimes and narcotics are also remained unsatisfactory.

He denied the charges in his reply to the charge sheet, asserting that no substantial evidence existed to substantiate the allegations. Following the inquiry, he was found not guilty of the specific charges but despite that he was awarded the punishment of "Forfeiture of 01 year approved service" vide order dated 08.04.2020. Feeling aggrieved, he filed departmental appeal, which was dismissed/rejected vide order dated 01.07.2020. He 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. Learned counsel for the appellant contended that the impugned orders were issued in disregard of the evidentiary standards as there was no concrete evidence presented to substantiate the charges against the appellant, including the allegations of corruption and unsatisfactory performance. He next contended that the procedure outlined under Rule 6 of the Police Rules 1975 was not adhered to and no incriminating evidence was shown to support claims of unsatisfactory performance. He further contended that the principle of vicarious liability cannot be applied here as it requires evidence of common intention among the appellant and the subordinates, without proving this collective intent,


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penalizing the appellant for the misconduct of his subordinates is unwarranted. He also contended that the charge of unsatisfactory performance is subjective and lacks specificity, making it untenable. He next argued that the respondent's reliance on a two-month performance period to determine the appellant's fitness for duty indicates malafide intentions. He further argued that the reply provided by the appellant, which included a list of traced cases, was ignored when imposing the penalty. He also argued that the decision is detrimental to the appellant's career, potentially hampering his chances for future promotions, which raises concerns regarding the fairness of the proceedings. In the last, he argued that the appeal in hand may be accepted by setting-aside the impugned orders.

4. On the other hand, the learned District Attorney for the respondents contended that the appellant, during his tenure as SHO, was involved in corrupt activities with known criminals and drug peddlers. He next contended that his misuse of authority, as evidenced by the actions of his subordinates, reflects gross misconduct. He further contended that a proper inquiry was conducted and based on the findings of the enquiry officer, the competent authority rightly imposed a minor punishment, which is lawful and justified. He also contended that the appellant was afforded numerous opportunities to defend himself throughout the inquiry process but he failed to rebut the charges during the inquiry resulted in the upholding of the penalty. He next argued that the actions taken against the appellant were in strict compliance with the law, and no malafide intentions were evident in the decisions made. In


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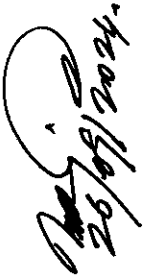
the last, he argued that the appeal in hand may be dismissed with cost being meritless.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The perusal of the record shows that the appellant while serving as the Station House Officer (SHO) at Police Station Tatara, Peshawar, two constables, Majid and Luqman, were transferred to his station on January 23, 2020. Both constables remained absent from February 19, 2020, which was noted in the Daily Dairy and reported to the Superintendent of Police (SP) for action. The appellant was issued charge sheet/statement of allegations due to his alleged involvement with criminals and drug peddlers, illegal detentions and unsatisfactory performance in managing cases of crime. The appellant denied all allegations in response to the charge sheet, leading to a departmental inquiry. SP Rural was appointed as inquiry officer, who conducted the inquiry in the matter. The inquiry officer examined allegations pertaining to the appellant's involvement in corrupt practices and connections with criminal elements and drug peddlers. The findings of the inquiry officer indicate that there was insufficient evidence to support these claims. The inquiry officer decisively noted that the allegations against the appellant regarding corrupt practices and collusion with criminal elements remain unproven, thereby ruling in favor of the appellant concerning these specific counts. The inquiry delved into the actions of the assigned constables, Majid and Luqman, suggesting that their alleged criminal activities were orchestrated under the guidance of the appellant. Again,


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the inquiry officer stated that no concrete evidence emerged during the inquiry to support the assertion that the appellant was directing or fostering the criminal conduct of the aforementioned constables. In contrast to the previous allegations, the inquiry officer found merit in the allegations No. 03. However, this conclusion was reached without a robust presentation of documentary or corroborative evidence to substantiate the allegation No. 03. The findings from this inquiry raise significant questions regarding procedural fairness throughout the disciplinary proceedings against the appellant. The necessity for concrete evidence when making serious allegations of misconduct in a police setting is paramount. The reliance on vague assertions as opposed to documented, substantiated claims creates a risk of undermining both the integrity of the police discipline process and the rights of the official/officers involved. The presence of ambiguous charges without detailed evidence can lead to unjust outcomes. Clarity and precision are crucial in ensuring that any disciplinary action is warranted and substantiated by incontrovertible proof. The results of this case underscore a larger systemic issue regarding police accountability and the mechanisms in place for handling allegations against official/officers. The balance between maintaining discipline and ensuring fair treatment of official/officers is delicate and requires rigorous standards of evidence and procedure. In light of the findings, we conclude that the first two allegations against the appellant for corrupt practices and collusion with drug peddlers are dismissed due to lack of evidence. However, the issue regarding his performance with regard to working out pending untraced

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cases, curbing street crimes and narcotics were also unsatisfactory, requires further clarity and proper substantiation of claims.

7. Based on the findings of the inquiry and the considerations outlined above, the motion to discipline the appellant concerning the allegations of corrupt practices and illegal associations is hereby dismissed. Additionally, the charges related to his performance with regard to working out pending untraced cases, curbing street crimes and narcotics are also remained unsatisfactory, this aspect require further investigation and adherence to proper procedures before any disciplinary actions can be taken. Consequently, we partially accept the appeal, set-aside the impugned orders and direct the respondents to conduct a de novo inquiry regarding allegation No. III mentioned in charge sheet/statement of allegations. This inquiry must be completed within two months from the date of receipt of copy of this judgment. 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 26th day of September, 2024.*



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Member (Judicial)



RASHIDA BANO
Member (Judicial)

ORDER

26th Sept, 2024

1. Learned counsel for the appellant present. 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, set-aside the impugned orders and direct the respondents to conduct a de novo inquiry regarding allegation No. III mentioned in charge sheet/statement of allegations. This inquiry must be completed within two months from the date of receipt of copy of this judgment. 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 26th day of September, 2024.*


(Rashida Bano)
Member (Judicial)


(Aurangzeb Khattak) 26/09
Member (Judicial) 2024.