

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK ... MEMBER (Judicial)**
MUHAMMAD AKBAR KHAN ... MEMBER (Executive)

Service Appeal No. 134/2024

Date of presentation of Appeal.....05.01.2024
Date of Hearing.....16.10.2024
Date of Decision.....16.10.2024

Innayat Khan (Ex-Shoulder DSP), District Central Kurram.
.....**Appellant**

Versus

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
 2. The District Police Officer, Kurram Khyber Pakhtunkhwa.
 3. The Regional Police Officer Kohat Region Kohat.
-**(Respondents)**

Present:

Mr. Muhammad Asif Yousafzai, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The appellant was initially recruited as Khassadar (BPS-1) in 1996 and later absorbed into the Khyber Pakhtunkhwa Police as a Constable (BPS-7) and was assigned the duties of DSP. Disciplinary proceedings were initiated against the appellant on the allegations of misconduct related to the unauthorized allocation of police personnel to local Malaks without any legal authority or prior permission of competent Authority. On conclusion of the inquiry, the appellant was dismissed from service vide impugned order dated 05.07.2023. Feeling aggrieved, the appellant filed departmental appeal challenging his

dismissal, which was rejected by the departmental appellate authority vide impugned order dated 06.09.2023. There-after, the appellant filed revision petition, which was not responded within the statutory period of 90 days, hence, he filed the instant service appeal before this Tribunal for redressal of his grievance.

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

3. The learned counsel for the appellant contended that the orders dated 05.07.2023 and 06.09.2023 are contrary to law, facts and principles of justice; thus, they are untenable and liable be set aside. He next contended that the appellant has a commendable service history, with numerous awards from superiors, which confirms that the allegations against him are baseless. He further contended that allegations regarding sending police personnel on leave as well as allocation of police personnel to local Malaks, are unfounded, based on assumptions rather than evidence and dismissed by witnesses during inquiries. He next argued that the inquiry officer exceeded his authority by investigating matters beyond the scope of the charge sheet, violating established legal precedents. He further argued that the charge sheet failed to specify the allegations, impairing the appellant's right to a fair defense—an act that is contrary to service tribunal and superior court judgments. He also argued that the appellant was denied a fair hearing and the opportunity to cross-examine witnesses, violating Article 10-A of the Constitution and the principle of "Audi Alteram Partem". In the last, he argued that

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the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

4. Conversely, learned Deputy District Attorney for the respondents contended that the appellant while serving as acting DSP, was involved in misconduct, specifically in the manipulation and improper allocation of police personnel to local Malaks without authorization, constituting gross misconduct. He next contended that in light of the allegations, a charge sheet was issued and a proper departmental inquiry was initiated, overseen by the SP Investigation Kurram. He further contended that the inquiry officer found the appellant guilty of the charges, indicating involvement in illegal activities and mismanagement of police personnel. He also contended that following the inquiry, the appellant received a final show cause notice, his response was found unsatisfactory and he was given opportunity of personal hearing, where he failed to provide convincing evidence in his defense, resulting in his dismissal on 05/07/2023. He next argued that the actions taken against the appellant, including his dismissal, were conducted in compliance with the law and departmental rules. He further argued that the findings of the inquiry were valid and the disciplinary actions were justified due to his unsatisfactory performance and misconduct. He also argued that the inquiry was conducted methodically, with appropriate legal processes followed and the appellant was afforded ample opportunity to present his defense, which ultimately proved unconvincing. In the last, he

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

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

6. The perusal of the record show that the appellant was serving as acting DSP Central Kurram when allegations arose concerning his involvement in the manipulation and mismanagement of police personnel. This alleged misconduct purportedly took place in collusion with former OHC, Saif-ul-Malook. Specifically, it was alleged that the appellant illegally distributed and allocated police personnel to local Malaks without legal authority or the necessary prior permission from the competent authority. On April 3, 2023, the appellant was issued a charge sheet outlining these allegations. However, upon review, it is evident that the charge sheet lacked specificity and failed to identify the names of the police personnel and local Malaks involved. This deficiency infringed upon the appellant's ability to prepare an adequate and robust defense against the charges. The charges presented against the appellant appear to be grounded in conjecture without any substantive documentary evidence provided to substantiate the allegations. This lack of evidentiary support raises questions about the validity of the claims made against him. Following the issuance of the charge sheet, the appellant was suspended and closed to police line Sadda, as per the order dated April 6, 2023. An inquiry was initiated and SP Investigation Kurram was appointed as the inquiry officer. However, it was noted that there was

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an absence of documentary evidence or materials submitted by the respondents to indicate that the statements from officials were recorded during the inquiry proceedings. The inquiry officer's findings further expanded beyond the allegations articulated in the charge sheet, which substantially undermines the integrity of the inquiry. According to Supreme Court of Pakistan judgment reported as 2020 SCMR 1245, the inquiry officer's jurisdiction is limited to the allegations contained in the charge sheet, without the power to deliver findings on matters outside that scope. It is clear that in this case, the inquiry officer exceeded his authority by addressing issues not included in the original charge sheet. It was also observed that the inquiry officer failed to provide the appellant with a fair opportunity to present and support his defense, as well as to cross-examine any witnesses. This oversight constitutes a violation of the principles of natural justice, which necessitate that all parties in a legal process are afforded adequate opportunity to defend themselves against any allegations. Based on the findings above, the process by which the appellant was accused and subsequently dealt with was flawed at multiple levels. The lack of specificity in the charge sheet, absence of documentary evidence, the inquiry officer's overreach into matters beyond the charge sheet and the violations of natural justice principles present substantial grounds for reconsideration of the proceedings against the appellant.


7. In view of the above, the impugned orders are set aside, the appellant is reinstated into service and the matter is remitted back to

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the departmental authorities with explicit direction to conduct a proper inquiry within a specified timeframe of three months from the date of receipt of a copy of this judgment. The appellant shall be afforded full opportunities to present his case, which includes the right of personal hearing as well as cross-examination of witnesses. Procedural fairness must guide this inquiry and all evidence shall be duly considered. The issue of back benefits shall be determined based on the outcome of the proper 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 16th day of October, 2024.*


AURANGZEB KHATTAK
Member (Judicial)


MUHAMMAD AKBAR KHAN
Member (Executive)


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ORDER

16th Oct, 2024

1. Appellant alongwith his counsel present. Mr. Falak Nawaz, DSP (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the impugned orders are set aside, the appellant is reinstated into service and the matter is remitted back to the departmental authorities with explicit direction to conduct a proper inquiry within a specified timeframe of three months from the date of receipt of a copy of this judgment. The appellant shall be afforded full opportunities to present his case, which includes the right of personal hearing as well as cross-examination of witnesses. Procedural fairness must guide this inquiry and all evidence shall be duly considered. The issue of back benefits shall be determined based on the outcome of the proper 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 16th day of October, 2024.*


(Muhammad Akbar Khan)
Member (Executive)


(Aurangzeb Khattak)
Member (Judicial)

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