

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

BEFORE: AURANGZEB KHATTAK ... MEMBER (J)
MUHAMMAD AKBAR KHAN ... MEMBER (E)

Service Appeal No. 576/2023

Date of presentation of Appeal.....16.03.2023
Date of Hearing.....16.10.2024
Date of Decision.....16.10.2024

Bilal Ahmad S/o Sohail Badshah R/o Gharang Siraj Khel, Tehsil Takht-e-Nasrati District Karak.....(Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Kohat Region, Kohat.
3. District Police Officer Karak.
4. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.....(Respondents)

SYED ROMAN SHAH,
Advocate

For appellant.

ASIF MASOOD ALI SHAH,
Deputy District Attorney

For respondents

JUDGMENT

MUHAMMAD AKBAR KHAN MEMBER (E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"On accepting this service appeal, the impugned orders dated 09.01.2023 and 21.02.2023 may graciously be set aside by declaring it illegal, unlawful, without authority, based on mala fide, void abinitio and thus not sustainable in the eyes of law and appellant is entitled for all back benefits of pay and service."

02. Brief facts of the case as per memorandum of appeal, are that respondents No. 3 initiated disciplinary proceedings against the appellant by serving charge sheet and statement of allegations on him and after conducting of inquiry respondent No. 3 passed an order bearing OB No. 20 dated 09.01.2023 vide which major punishment of termination/removal from service was passed against the appellant without collecting any evidence and providing opportunity of hearing to him. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 01.03.2023, hence preferred the instant service appeal on 16.03.2024.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned orders 09.01.2023 & 03.01.2023 are illegal, unlawful, without authority, based on malafide intention and violation of the Constitution of Islamic Republic of Pakistan, hence liable to be set side; that the impugned orders were harsh, without any evidence based on surmised & conjectures and against the principle of natural justice; that during the enquiry proceedings, no one was examined in support of the charges leveled against the appellant nor any opportunity of personal hearing was afforded to the appellant; that the entire proceedings were carried out at the back of the appellant and he has been condemned unheard. He submitted that no

regular inquiry has been conducted in the matter which is mandatory obligation on the part of competent authority. In the last, he requested that the appeal might be accepted as prayed for.

05. On the other hand, learned Deputy District Attorney contended that the appellant was charge sheeted for making deceit/fraud in recruitment as Constable in the Police Department. He further contended that the appellant had qualified ETEA test for recruitment as Constable for the year 2020-21 but he was not recommended in the psychological assessment/final interview by the Regional Selection Board because of his mental health condition. The list received from CPO Peshawar at District Karak, showed the appellant as "recommended" while in another list provided from SSU (CPEC) CPO Peshawar, he was shown as "not recommended". Similarly, the list requisitioned from CPO Peshawar by the Regional Police Officer, Kohat did not reflect him as "recommended". Learned Deputy District Attorney argued that the appellant fraudulently succeeded in getting his appointment order on the basis of tempered recommendation; that proper inquiry was conducted and he was given chance for personal hearing and self-defense but he did not prove him innocent; that the impugned orders were passed after observing all the legal and codal formalities.

06. During scrutiny of record it came to surface that one Amirullah, who was similarly placed employee had filed Service Appeal bearing No. 1223/2023 titled "Amirullah Versus Inspector General of Police Khyber Pakhtunkhwa, Peshawar and others", which was remitted to the respondent

department vide judgment dated 23.02.2024. Para- 6 & 7 of the said judgment are reproduced below:-


6. *The appellant was recruited as Constable in the Khyber Pakhtunkhwa Police through ETEA, 2020-21, and was issued belt No. 5007. At some later stage, it came to the knowledge of the respondent department that the appellant was shown as "passed" at serial no. 130, scoring 40 marks in ETEA merit list, received directly from CPO Peshawar whereas the ETEA list requisitioned from CPO Peshawar through RPO did not show his name, which meant that he was a failed candidate. He was charged on the ground that he got himself recruited through fraud and deception. An inquiry was conducted and he was awarded major punishment of termination/removal from service. According to the inquiry report annexed with the reply of the respondents, there were two recruitment lists. In one of the lists, out of the 130 successful candidates, the appellant was "recommended" at serial no. 130, whereas in the other, 128 candidates were shown as successful but in that list, name of the appellant was not mentioned. In the same report, the inquiry officer has clearly mentioned in its last sentence that how the name of the appellant was brought in the list provided by the CPO is to be ascertained by the CPO Peshawar. When the learned Deputy District Attorney was confronted with the question that whether any action was taken on the recommendation of the inquiry officer, he frankly stated that no action was taken except passing the impugned order of termination/removal from service. One completely fails to understand that how the lists were manipulated by the appellant and why no one in the office of Inspector General of Police, Central Police*


Office Khyber Pakhtunkhwa bothered to ascertain the facts behind the two lists being issued from the same office.

7. *In the light of the above discussion, the appeal in hand is remitted to the respondent department for holding proper inquiry into the matter and conclude the report within sixty days of the receipt of this judgment. The question of back benefits is subject to the outcome of inquiry report. Cost shall follow the event. Consign.*

07. In view of the above judgment rendered by this Tribunal dated 23.02.2024 in *Service Appeal bearing No. 1223/2023 titled "Amirullah Versus Inspector General of Police Khyber Pakhtunkhwa, Peshawar and others"*, the appeal in hand is allowed by setting aside the impugned orders dated 09.01.2023 & 03.01.2023 and the appellant is reinstated in service for the purpose of proper inquiry. The respondents shall conduct the inquiry strictly in accordance with relevant law/rules within a period of 60 days after receipt of the judgment. The issue of back benefits shall be subject to the outcome of inquiry report. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 16th day of October, 2024.*


(Aurangzeb Khattak)
Member (J)


(Muhammad Akbar Khan)
Member (E)

Kamranullah


ORDER

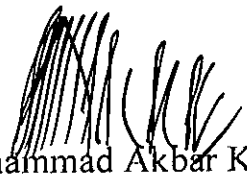
16.10.2024

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

2. Vide our detailed judgment of today separately placed on file, the appeal in hand is allowed by setting aside the impugned orders dated 09.01.2023 & 03.01.2023 and the appellant is reinstated in service for the purpose of proper inquiry. The respondents shall conduct the inquiry strictly in accordance with relevant law/rules within a period of 60 days after receipt of the judgment. The issue of back benefits shall be subject to the outcome of inquiry report. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 16th day of October, 2024.*


(Aurangzeb Khattak)
Member (J)


(Muhammad Akbar Khan)
Member (E)