

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 7935/2021

Date of presentation of Appeal.....16.12.2021
Date of Hearing.....26.09.2024
Date of Decision.....26.09.2024

Constable Ali Faisal, No. 194 Police Lines Kohat.

.....**Appellant**

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Kohat Region, Kohat.
3. District Police Officer, Kohat.

.....(**Respondents**)

Present:

Syed Mudasir Pirzada, Advocate,For appellant
Mr. Muhammad Jan, District Attorney.....For respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as narrated by the appellant in his memorandum of appeal, are that he, while serving at PS Cantt Kohat was charged with allegations of corruption and criminal associations, leading to respondent No. 3 imposing a punishment of stoppage two years' increment with cumulative effect vide order dated 13.10.2017. Feeling aggrieved, he filed departmental appeal on 21.09.2021, which was rejected on 16.11.2021. Hence, he 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 charges against the appellant are unsubstantiated and the inquiry was conducted in a biased and flawed manner. He next contended that the appellant was issued a charge sheet based on ill-reputation and alleged links with criminals and despite submitting a reply, the inquiry officer unjustly found him guilty. He further contended that the inquiry was conducted without proper adherence to police and inquiry rules, without associating the appellant or calling him to the Orderly Room. He also contended that the appellant was not issued final show-cause notice, nor was he allowed to cross-examine witnesses or present defense evidence, rendering the proceedings defective. He next argued that the appellant possessed numerous commendable entries in his service record that were overlooked, leading to an unduly harsh punishment. He further argued that the required rules and procedural safeguards were violated, showing bias from the inquiry officer and misuse of authority by respondent No. 3. He further argued that no evidence linked the appellant to the allegations and the inquiry lacked examination of witnesses from the general public, therefore, dragging the appellant into litigation is unnecessary and the punishment was unconstitutional under Pakistan's 1973 Constitution. 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 was rightfully served with a charge sheet,


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alongside a statement of allegations concerning his ill reputation. He next contended that an inquiry was conducted by the SDPO Saddar Kohat, who, after following due process, held the appellant guilty of the charges. He further contended that a lenient view was taken, resulting in a minor punishment of two years' cumulative increment stoppage, instead of a major one. He next argued that the appellant was heard personally and given opportunities to defend himself but failed to address the allegations effectively. He further argued that the records indicate previous punishments of misconduct, thus supporting the impugned order. In the last, he argued that the inquiry adhered to procedural norms and was based on sufficient evidence and prior service records of misconduct, therefore, the appeal in hand may be dismissed with costs.

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 perusal of the record reveals that the appellant, while serving as Constable at Police Station Cantt, was charged on the allegations of corruption and criminal associations. The allegations against the appellant were based on serious charges involving corruption and criminal associations. The inquiry was conducted by, DSP Zahir Shah, who recommended major punishment. This suggests that the findings of the inquiry confirmed the charges to a degree that warranted strong corrective measures. Despite the recommendation for major punishment, the competent authority decided on a more lenient approach. The minor

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punishment of stoppage of two years of increments with cumulative effect vide order dated 13.10.2017, was awarded to the appellant, indicating an intention to penalize the appellant without terminating/dismissing/removal from service or implementing more severe consequences. This decision reflects a consideration of potentially mitigating factors or a desire to provide an opportunity for the appellant to reform. The service record of the appellant shows a history of disciplinary issues. The record includes previous warnings and a censure, which indicates a pattern of behavior that required correction. The repetition of misconduct suggests that earlier disciplinary actions did not achieve the intended effect of reform. The evaluation considers whether the penalty imposed is proportionate to the offenses. While the appellant's service record indicates previous issues, the imposed penalty of stopping two years of increments with cumulative effect is seen as substantial yet not excessively severe. Given the appellant's history, this penalty might be viewed as stringent but justified within the framework of maintaining discipline and accountability. In the given circumstances, balancing the nature of the charges, the appellant's consistent misconduct and the potential impact of the penalty on the appellant's career, the penalty seems reasonable. However, we acknowledge the appellant's argument that the penalty could be perceived as harsh, given the leniency in terms of not applying more severe options such as demotion or dismissal.


7. The question that arises, however, is whether the penalty awarded to the appellant is commensurate with the gravity of the charge or if it is


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excessively harsh. It is acknowledged that the competent authority has the jurisdiction to impose any punishment prescribed under the Police Rules of 1975. However, for the proper administration of justice, the punishment should reflect the seriousness of the grounds on which it is based. Considering the facts and circumstances of the case, we observe that the penalty imposed on the appellant is too severe. Therefore, in the interest of justice, we deem it just to modify the minor penalty of stoppage of two years' increments with cumulative effect to a minor penalty of stoppage of two years' increments without cumulative effect.

8. Accordingly, the impugned order dated October 13, 2017, is modified to change the punishment from stoppage of two years' increments with cumulative effect to stoppage of two years' increments without cumulative effect. Each party shall bear its own costs. File be consigned to the record room.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 26th day of September, 2024*


AURANGZEB KHATTAK
Member (Judicial)


RASHIDA BANO
Member (Judicial)

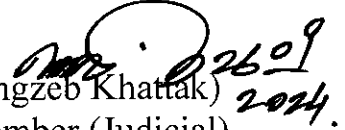
ORDER

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, the impugned order dated October 13, 2017, is modified to change the punishment from stoppage of two years' increments with cumulative effect to stoppage of two years' increments without cumulative effect. Each party shall bear its 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)
Member (Judicial)