

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

BEFORE: **AURANGZEB KHATTAK** ... **MEMBER (Judicial)**  
**FAREEHA PAUL** ... **MEMBER (Executive)**

**Service Appeal No. 2051/2023**

Date of presentation of Appeal.....21.10.2023  
Date of Hearing.....23.10.2024  
Date of Decision.....23.10.2024

**Muhammad Bilal** S/o Allah Wasaya Case Baloch Resident of Ijaz Abad Muryali, District Dera Ismail Khan (Ex-Constable FRP, Belt No. 8198). .....**Appellant**

Versus

1. Government of Khyber Pakhtunkhwa, through Home Secretary, Civil Secretariat, Peshawar.
2. Provincial Police Officer/IGP Khyber Pakhtunkhwa, Central Police Office Peshawar.
3. Commandant FRP Khyber Pakhtunkhwa Peshawar. .
4. Regional Police Officer/DIG, D.I.Khan.
5. Superintendent FRP, D.I.Khan.

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

Present:

Mr. Saif-ur-Rehman Khan, Advocate .....For appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** The appellant was inducted as a constable starting January 3, 2011 in the Police Department (FRP Range D.I.Khan). On June 18, 2019, an F.I.R No. 598 dated 18.06.2019 under sections 302/404/109/34 PPC Police Station Cantt, D.I.Khan was registered against the appellant and others. Consequently, departmental proceedings were initiated based on the said FIR and his absence. The inquiry initially conducted by DSP Zahoor ud Din concluded with a recommendation to await the trial court's decision.

However, another inquiry, led by DSP Asad Mehmood, was initiated against the appellant and resultantly he was found guilty, culminating in his removal from service on July 7, 2020. The appellant was arrested in the case on August 10, 2019 and during the pendency of trial he remained incarcerated until his acquittal on June 21, 2023, by the ASJ-VI, D.I.Khan. Following his acquittal, the appellant filed departmental appeal for reinstatement on July 11, 2023, which was rejected on September 14, 2023. 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 removal order of the appellant was arbitrary and violated principles of natural justice. He next contended that the inquiry was flawed, conducted ex-parte and did not follow prescribed legal procedures, leading to a miscarriage of justice. He further contended that the appellant's absence was due to his detention in jail in connection with the false FIR and was not voluntary, therefore, his return to service after his acquittal indicates no intention of abandoning from duty. He also contended that the re-inquiry was allegedly ordered with malicious intent despite a favorable initial report, demonstrating personal bias and ill-will by Superintendent FRP, D.I.Khan (Respondent No. 5). He next argued that the appellant was not allowed to cross-examine witnesses or respond to a final show-cause notice. He further argued that the removal order of the appellant dated 07/07/2020 was not communicated, denying

*23/10/2024*

him an opportunity to defend himself. He also argued that the appellant is having over 12 years of service, therefore, his removal order contravene established service rules and procedures, rendering the removal order illegal and a nullity. In the last, he argued that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, the learned Deputy District Attorney for the respondents contended that service history of the appellant indicates inefficiency, supported by six negative entries and no positive ones. He next contended that the appellant remained absent from duty from June 17 to June 20, 2019, during which he became embroiled in a serious criminal case (FIR No. 598, dated 18.06.2019) leading to his suspension on June 19, 2019 (OB No. 462). He further contended that a departmental inquiry commenced due to his absence and criminal involvement, involving a charge sheet and an appointed Enquiry Officer, who found the appellant guilty. He next argued that the appellant's arrest and return to jail validated the gravity of the allegations against him. He further argued that the appellant was aware of the inquiry and subsequent removal order; his father, also in the police force, was informed of the proceedings. In the last, he argued that the appellant was removed from service on 07.07.2020 and he filed departmental appeal on 11.07.2023, which is badly time barred, therefore, the appeal in hand is liable to be dismissed on this score alone.

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

*Amir*  
*23/10/2024*

6. The record shows that disciplinary proceedings initiated against the appellant stemmed from allegations concerning his absence from duty effective June 17, 2019, without prior leave or permission from the competent authority. These proceedings coincided with the appellant's involvement in the criminal case encapsulated in FIR No. 598 dated June 18, 2019, under sections 302/404/109/34 of the Pakistan Penal Code at Police Station Cantt, D.I. Khan. Initially, Superintendent FRP, D.I. Khan, appointed Mr. Zahoor ud Din, DSP, as the inquiry officer. Upon concluding the inquiry, Mr. Zahoor ud Din recommended that the inquiry be kept pending until the resolution of the criminal case. The Superintendent FRP, D.I.Khan, however, disagreed with these findings and subsequently appointed Mr. Asad Mehmood, DSP as inquiry officer, who re-evaluated the case. This shift in the inquiry process from an initial favorable finding to a re-inquiry raises significant concerns regarding impartiality. Such actions suggest a bias against the appellant rather than a fair and objective assessment of the facts, which is critical in maintaining the integrity of disciplinary proceedings. It is noted that this re-inquiry was conducted against the appellant when he was confined in judicial lockup in a criminal case and during his incarceration period inquiry was conducted and he was removed from service without recording the statements of the complainant or the witnesses involved, nor was the appellant afforded the opportunity for cross-examination or to present his personal defense. On July 7, 2020, the appellant was removed from service based on the findings of the re-inquiry conducted by Mr. Asad Mehmood, DSP. After obtaining

*Asad Mehmood*  
*23/10/2024*

ad-interim pre-arrest bail in the criminal case, the appellant arrived at the work place for duty on June 20, 2019. On August 10, 2019, the appellant was sent to Judicial lock-up D.I.Khan by the court concerned after the rejection of his BBA application. The appellant remained in the Judicial Lock-up from August 10, 2019 until June 21, 2023, at which point he was acquitted on June 21, 2023 by ASJ-VI, D.I. Khan. The acquittal in the criminal case is pivotal. While departmental actions can function independently of legal proceedings, the criminal court's finding of not guilty inherently calls into question the validity of the allegations that consequently led to the disciplinary inquiry. The charges against the appellant, which triggered the disciplinary action, were not substantiated to the requisite standard of proof. The appellant's absence from duty was not willful. His absence correlated with the legal proceedings concerning the serious allegations against him. It is paramount that the competent authority was aware of the circumstances surrounding his legal struggles, which suggests a lack of reasonable grounds for charging him with absence from duty in the July 7, 2020, impugned order. In light of the aforementioned points, particularly the appellant's acquittal, the failure to provide a fair inquiry process and the inability of the disciplinary proceedings to substantiate the charges against him, we conclude that the removal of the appellant from service lacked just cause.


7. As regard the question of limitation, the appellant was in custody from August 10, 2019, until his acquittal on June 21, 2023. This substantial period of custody effectively hindered his ability to file departmental appeal or contest the actions leading to his removal from


  
23/10/2024

service. The appellant's acquittal on June 21, 2023, is a pivotal point and he submitted his departmental appeal on July 11, 2023, which is within the prescribed period following his acquittal. It is concluded that the departmental appeal filed by the appellant on July 11, 2023, is well within the time limits mandated by law. Reliance is placed on the judgment of the august Supreme Court of Pakistan cited in PLD 2010 SCMR 695 titled "*Chairman ADBP and another V/S Mumtaz Khan*".

8. Consequently, the impugned orders are set-aside and the appellant is reinstated in service, while the period of his absence from duty is converted into leave without pay. Parties are left to bear their 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 23<sup>rd</sup> day of October, 2024.*

  
AURANGZEB KHATTAK  
Member (Judicial) 23/10/2024

  
FAREEHA PAUL  
Member (Executive)

Note

4<sup>th</sup> October, 2024

The case could not be fixed before D.B at Camp Court, D.I. Khan due to cancellation of tour. Therefore, instant be fixed on 23.10.2024 for arguments before D.B. at the Principal Seat, Peshawar. Counsel be informed telephonically.



(Habib ur Rehman Orakzai)  
Registrar


**ORDER**

23<sup>rd</sup> Oct, 2024

1. Appellant alongwith his counsel present. 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 and the appellant is reinstated in service, while the period of his absence from duty is converted into leave without pay. 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 23<sup>rd</sup> day of October, 2024.*



(Fareeha Paul)  
Member (Executive)



(Aurangzeb Khattak)  
Member (Judicial) 23/10  
2024.