

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
MUHAMMAD AKBAR KHAN ... **MEMBER (Executive)**

Service Appeal No.770/2023

Date of presentation of Appeal.....27.03.2023
Date of Hearing.....21.10.2024
Date of Decision.....21.10.2024

Muhammad Ayaz, Ex-Inspector, Firearms, Section FSL, Khyber Pakhtunkhwa, Peshawar.....(*Appellant*)

Versus

1. **The Director Forensic Laboratory**, Khyber Pakhtunkhwa, Peshawar.
2. **The AIG of Police (Investigation)** Khyber Pakhtunkhwa, CPO, Peshawar.....(*Respondents*)

Present:

Syed Noman Ali Bukhari, Advocate.....For the appellant
Mr. Naseer Ud Din Shah, Assistant Advocate General.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 06.01.2023 WHEREBY, THE APPELLANT COMPULSORY RETIRED FROM THE SERVICE AND AGAINST THE ORDER DATED 02.03.2023 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case as reflected from the record, in brief is that serving as Inspector in the Police Department; that in the meanwhile, he was issued charge sheet and statement of allegations which were replied by him; that he was allegedly not associated with the inquiry proceedings and vide impugned order dated 06.01.2023, he was compulsorily retired from

service; that feeling aggrieved, he filed departmental appeal but the same was rejected on 02.03.2023, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned District Attorney for respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

5. In brief, the appellant, serving as an Inspector in the Police Department, received a charge sheet along with a statement of allegations, to which he responded. He contended that he was not adequately associated with the inquiry proceedings against him. Subsequently, he was compulsorily retired from service by an order dated January 6, 2023. Following this, the appellant filed a departmental appeal; however, this appeal was rejected on March 2, 2023. As a result, the appellant has initiated the current service appeal, seeking to contest the decision of his compulsory retirement and address the perceived inadequacies in the inquiry process.

6. The allegations leveled against the appellant are as under:

1. That you Inspector Muhammad Ayaz Khan of Fire Arms Section FSL Peshawar have a large number of live cartridges and you have not maintained a proper register for inventory and live cartridges despite instruction from seniors previously.
2. When DSP Admin FSL asked you for stock register you have told that the register was at your home.
3. That you have never informed your seniors regarding unaccounted live cartridges and inventory.
4. Storing large number of ammunition in a haphazard and unsafe way could have resulted in accidental mishap at FSL.
5. Upon search of the Fire Arms Section by DSP Admin FSL, 68.5 grams (gross weight) CHARAS was recovered from your cabinet under lock & key was opened With keys by yourself in the presence of Rahat Ullah (incharge HR) and Sana Ullah (Line Officer FSL).
6. The above mentioned allegations shows your lack of interest in official duty and attempt to misappropriate govt. property (unused ammunition). It is not clear at this stage as to how much ammunition you have taken away from FSL for your personal gains."
7. During the course of inquiry, no evidence has been collected.

Therefore, the same is bereft of any supporting material to prove the allegations leveled against the appellant. Upon the said allegations, the appellant was awarded major punishment of compulsory retirement. While, the inquiry as per the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 ought to have been conducted as per Rule-11 of the Rules ibid. The said Rule is reproduced as under:

"11. Procedure to be followed by inquiry officer or inquiry committee.—(1) On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.



(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry ex-parte.

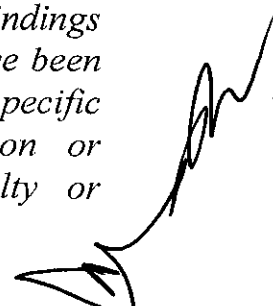
(3) The inquiry officer or the inquiry committee, as the case may be, shall hear the case on day to day and no adjournment shall be given except for reasons to be recorded in writing, in which case it shall not be of more than seven days.

[(4) Statements of witnesses shall be recorded in the presence of accused and departmental representative.]

(5) Where the inquiry officer or the inquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if, thereafter, he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.

(6) If the accused absents himself from the inquiry on medical grounds, he shall be deemed to have hampered or attempted to hamper the progress of the inquiry, unless medical leave, applied for by him, is sanctioned on the recommendations of a Medical Board; provided that the competent authority may, in its discretion, sanction medical leave up to seven days without such recommendations.

[(7) The inquiry officer or the inquiry committee, as the case may be, shall complete the inquiry within sixty days or within such an extended period, which the competent authority may allow on the request of the inquiry officer or inquiry committee, as the case may be, for reasons to be recorded and shall submit his or its report to the competent authority within seven days of the date of completion of inquiry. The inquiry report must contain clear findings as to whether the charge or charges have been proved or not proved and specific recommendations regarding exoneration or imposition of minor or major penalty or penalties upon the accused.]



8. In view of above, impugned order dated 06.01.2023 is set aside. The matter be remitted to the respondents to conduct proper inquiry by associating the appellant and giving him proper opportunity of defense, which is to be conducted within 60 days of the receipt of this judgment. Appellant is reinstated into service for inquiry. The issue of back benefits shall be subject to the outcome of inquiry. Costs shall follow the event. Cosign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 21st day of October, 2024.*



KALIM ARSHAD KHAN

Chairman



MUHAMMAD AKBAR KHAN

Member (Executive)



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.770 of 2023

Muhammad Ayaz

versus

Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<p>Order-13 21st October, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Syed Noman Ali Bukhari, Advocate on behalf of appellant.2. Mr. Naseer Ud Din Shah, Assistant Advocate General for the respondents.3. Vide our detailed judgment of today, placed on file, impugned order dated 06.01.2023 is set aside. The matter be remitted to the respondents to conduct proper inquiry by associating the appellant and giving him proper opportunity of defense, which is to be conducted within 60 days of the receipt of the judgment. Appellant is reinstated into service for inquiry. The issue of back benefits shall be subject to the outcome of inquiry. Costs shall follow the event. Cosign.4. <i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 21st day of October, 2024</i> <p style="text-align: center;"> (Muhammad Akbar Khan) Member (E)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p><small>*Muzam Shah*</small></p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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Muhammad Ayaz(Appellant)

Versus

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2. **The AIG Investigation, Khyber Pakhtunkhwa, Peshawar.....**(Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 06.01.2023 WHEREBY, THE APPELLANT COMPULSORY RETIRED FROM THE SERVICE AND AGAINST THE ORDER DATED 02.03.2023 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

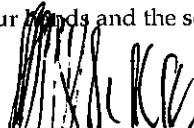
PRESENT

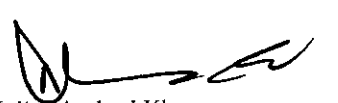
1. Syed Noman Ali Bukhari, Advocate, for the Appellant
2. Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents.

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs. 100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
Total	Rs. 100/-	Total	Rs. Nil

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 21st day of October 2024.


Muhammad Akbar Khan
Member (Executive)


Kalim Arshad Khan
Chairman