

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.1955/2023

Date of presentation of Appeal.....28.08.2023

Date of Hearing.....21.10.2024

Date of Decision.....21.10.2024

Farid Ullah son of Nawaz Khan, resident of Langar Khel Pakka,
Tehsil & District Lakki Marwat.....(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Home Department, Khyber Pakhtunkhwa, Peshawar.
2. **Commandant FRP** Khyber Pakhtunkhwa, Peshawar.
3. **Superintendent of Police FRP**, Bannu Range, Bannu.
.....(**Respondents**)

Present:

Mr. Muhammad Waqas, Advocate.....For the appellant

Mr. Muhammad Jan, District Attorney.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 16.06.2023 ISSUED BY RESPONDENT NO.3 VIDE WHICH HE AWARDED MAJOR PUNISHMENT TO APPELLANT AND DISMISSED HIM FROM SERVICE AND IMPUGNED ORDER DATED 11.08.2023 ISSUED BY RESPONDENT NO.2 VIDE WHICH HE REJECTED THE DEPARTMENTAL APPEAL OF THE APPELLANT.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case as reflected from the record, in brief is that he was serving as Constable in the Frontier Reserve Police; that FIR No.272 dated 17.04.2023 was registered against him which resulted in his suspension from service

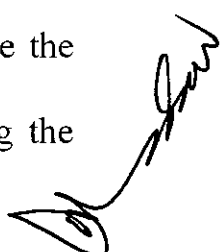
and inquiry was ordered in the matter; that resultantly, he was dismissed from service vide impugned order dated 16.06.2023; that feeling aggrieved, he filed departmental appeal but the same was rejected on 11.08.2023, hence, the instant service appeal.

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. Perusal of record shows that appellant was serving in the respondent department, as Constable. In the meanwhile, FIR No.272 dated 17.04.2023 U/S 365-A-386-387-18-149 PPC Police Station, Cantt; D.I.Khan. Resultantly, he was suspended by the authorities and inquiry was initiated against him. Inquiry was conducted by the respondents. On the basis of the said report, he was dismissed from service vide impugned order dated 16.06.2023. The said impugned order was assailed by the appellant before the appellate authority, however, his requests were not considered, compelling the appellant to approach the Tribunal through instant appeal.



6. The appellant has been dismissed from service on the basis of inquiry conducted against him and that too is a handwritten one. Rule-11 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 provides procedure for inquiry which is 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.]

7. In view of above, impugned order dated 16.06.2023 is set aside and the appeal in hand stands accepted. 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.

8. *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)


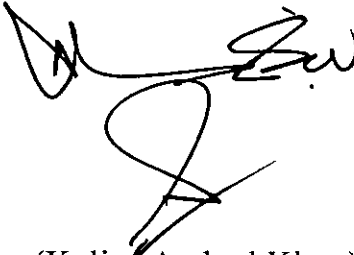
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.1955 of 2023

Farid Ullah

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
Order-11 21 st October, 2024.	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Muhammad Waqas, Advocate on behalf of appellant.2. Mr. Muhammad Jan, District Attorney for the respondents.3. Vide our detailed judgment of today, placed on file, impugned order dated 16.06.2023 is set aside and the appeal in hand stands accepted. 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>*Mutazem Shah*</small></p>


SA 1955/2023

20.05.2024 01. Nemo for the appellant. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Muhammad Ramzan, Inspector (Legal) for the respondents present.

02. Absolute last opportunity is granted for arguments on payment of cost of Rs. 2000/-. In case of failure, no other opportunity will be granted and the case will be decided on the basis of available record. To come up for cost and arguments on 20.08.2024 before the D.B at camp court, D.I.Khan. PP given to learned AAG.

SCANNED
KPSR
Peshawar


(Fareeha Paul)
Member(E)
Camp Court, D.I.Khan


(Rashida Bano)
Member(J)
Camp Court D.I.Khan.

Fazle Subhan, P.S

Note

4th October, 2024 The case could not be fixed before D.B at Camp Court, D.I. Khan due to cancellation of tour. Therefore, instant case be fixed on 21/10/2024 for arguments before D.B at the Principal Seat, Peshawar. Counsel be informed telephonically.

APP informed
Q


(Habib Ur Rehman Orakzai)
Registrar