(5) On receipt of the findings of the Inquiry Officer or where no such officer is appointed, on receipt of the explanation of the accused, if any, the authority shall determine whether the charge has been proved or not. In case the charge is proved the authority shall award one or more of major or minor punishments as deemed necessary."

7. Upon the inquiry report submitted by the Inquiry Officer, the RPO has made hand written remarks for dismissal of the appellant, from service which order was issued by the DPO, Nowshera. While the RPO has modified that punishment of dismissal into compulsory retirement from service. The impugned order of compulsory retirement ought to have been passed by the District Police Officer, Nowshera who was the competent authority. However, the same has been passed by the Regional Police Officer, Mardan.

8. Although, the inquiry has been conducted, yet the same has not been done as per Rule-6 of the Khyber Pakhtunkhwa Police Rules, 1975 (amended). The said rule is as under:

"6. Procedure of Departmental Inquiry:-

i. *Where an Inquiry Officer is appointed the authority shall-*

a. *Frame a charge and communicate it to the accused together with statement of the allegations explaining the charge and of any other relevant circumstances which are proposed to be taken into consideration;*

b. *Require the accused within 7 days from the day the charge has been communicated to him to put in a written defence and to state at the same time whether he desires tobe heard in person;*

ii. *The Inquiry Officer shall inquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the witnesses against him.*

iii. *The Inquiry Officer shall hear the case from day to day and no adjournment shall be givenexcept for reasons to be recorded in writing and where any adjournment is given,*

shall be observed when aPolice Officer is proceeded against under these rules:---

(1) When information of misconduct or any act of omission or commission on the part of a Police Officer liable for punishment provided in these rules is received' by the authority, theauthority, shall examine the information and may conduct or cause to be conducted quick brief inquiry if necessary, for proper evaluation of the information and shall decide whether the misconduct or the act of omission or commission referred to above should be dealt with in a Police Summary Proceedings in the Orderly Room or General Police Proceedings.

(2) In case the authority decides that the misconduct is to be dealt with in Police Summary Proceedings, he shall proceed as under-

(i) The accused officer liable to be dealt with in the Police Summary Proceedings shall be brought before the authority in an Orderly room.

(ii) He shall be apprised by the authority orally the nature of the alleged misconduct, etc. The substance of his explanation for the same shall be recorded and if the sameis found unsatisfactory, he will be awarded one of the minor punishments mentioned in these rules.

(iii) The authority conducting the Police Summary Proceedings may, if deemed necessary, adjourn them for a maximum period of 7 days to procure additional information.

(3) If the authority decides that the misconduct or act of omission or commission referred to above should be dealt with in General Police Proceedings he shall proceed as under-

a) The authority shall determine if in the light of facts of the case or in the interests of justice, a departmental inquiry, through an Inquiry Officer if necessary. If he decides that is not necessary; he shall-

b) By order in writing inform the accused of the action proposed to be taken in regard to him and the grounds of the action: and

c) Give him a reasonable opportunity of showing cause against that action: Provided that no such opportunity shall be given where the authority is satisfied that in the interest of security of Pakistan or any part thereof it is not expedient to give such opportunity.

(4) If the authority decides that it is necessary to have departmental inquiry conducted, through an Inquiry Officer, he shall appoint for this purpose an Inquiry Officer, who is senior in rank to the accused.

a. *It shall not be more than a week; and*

b. *The reasons therefore shall be reported forthwith to the authority.*

iv. *Where the Inquiry Officer is satisfied that the accused is hampering, or attempting to hamper the progress of the inquiry he shall administer a warning and if thereafter he is satisfied that the accused is acting in disregard of the warning, he shall record a finding to that effect and proceed to complete the departmental inquiry ex parte.*

The Inquiry Officer shall within 10 days of the conclusion of the proceedings or such longer period as may be allowed by the authority, submit his findings and grounds thereof to the authority."

9. Keeping in view the above situation, the impugned order dated 30.06.2024 is set aside and the matter is remitted back to the respondents to conduct proper inquiry, as per law rules, duly associating the appellant with the proceedings. Appellant is reinstated for the purpose of inquiry. The issue of back benefits shall be subject to the outcome of de-novo inquiry, which is to be conducted within 60 days of the receipt of this judgment. Costs shall follow the event. Cosign.

10. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23rd day of October, 2024.

KALIM ARSHAD KHAN
Chairman

MUHAMMAD AKBAR KHAN
Member (Executive)

Mutazem Shah

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.729/2024

Asif Ghani 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-05 23rd October, 2024.	Present: 1. Mr. Rizwanullah, Advocate on behalf of appellant. 2. Mr. Naseer Ud Din Shah, Assistant Advocate General for the respondents. **Kalim Arshad Khan, Chairman:** Vide our detailed judgment of today, placed on file, the impugned order dated 30.06.2024 is set aside and the matter is remitted back to the respondents to conduct proper inquiry, as per law rules, duly associating the appellant with the proceedings. Appellant is reinstated for the purpose of inquiry. The issue of back benefits shall be subject to the outcome of de-novo inquiry, which is to be conducted within 60 days of the receipt of the judgment. Costs shall follow the event. Cosign. *2. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23rd day of October, 2024* (Muhammad Akbar Khan) Member (E) (Kalim Arshad Khan) Chairman *Mutazem Shah*

case was assigned to the appellant. The appellant initiated his investigation by different angles, and, as per his contention, the accused felt unsafe, therefore, he filed complaints against the appellant. The said complaint resulted into an inquiry initiated against the appellant. Another application was also filed by that Ikram Rabbani against the appellant. One reporting was placed before the Regional Police Officer, Mardan, who ordered for his dismissal from service. The order of his dismissal was issued by the District Police Officer, Nowshera vide order dated 20.03.2024, which was assailed by the appellant through departmental representation on 26.03.2024. In response to his departmental appeal, the RPO, Mardan, appellate authority modified the punishment and issued the order of his compulsory retirement from service vide order dated 30.06.2024. Thereafter, the appellant filed revision petition under Rule 11-A of the Khyber Pakhtunkhwa Police Rules, 1975 for setting aside the impugned order dated 30.06.2024, however, the respondents showed no response over the said revision petition, therefore, the appellant approached the Tribunal by filing the instant service appeal.

6. The appellant's order regarding his compulsory retirement has been issued by the Regional Police Officer, Mardan Region, Mardan. However, Rule-5 of the Khyber Pakhtunkhwa Police Rules, 1975 renders guidance in this regard:

*"**5.Punishment proceedings.-***

The punishment proceedings will be of two kinds. i.e. (a) Summary Police Proceedings and

(b)General Police Proceedings and the following procedure

sheet/statement of allegations; that vide impugned order dated 20.03.2024, he was awarded major punishment of dismissal from service; that feeling aggrieved, he filed departmental appeal on 26.03.2024 before the RPO Mardan; that vide appellate order dated 30.04.2024, he was awarded major punishment of compulsory retirement from service; that the order of compulsory retirement dated 30.04.2024 was assailed by the appellant by filing revision petition under Rule 11-A of the Khyber Pakhtunkhwa Police Rules, 1975 but the same was not responded, 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 Assistant Advocate General 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 Assistant Advocate General controverted the same by supporting the impugned order(s).

5. Record reflects that appellant was serving in the Police Department. A petition under 22-A of Cr.PC was filed before the learned District & Sessions Judge, Nowshera to order the Police Department to lodge FIR against Ikram Rabbani. In the light of that petition, FIR was lodged and the investigation of the said criminal

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case as reflected from the record, in brief is that he joined the Police Department as Constable on 16.02.2022; that in consequence of filing 22-A Cr.PC petition before the learned District & Sessions Judge, Nowshera, FIR was ordered to be lodged; that inquiry was assigned to the appellant; that the accused of the said criminal case namely Ikram Rabbani filed complaint against the appellant alleging therein that he (the accused) was arrested from Rawalpindi while the same has been shown under the jurisdiction of Akora Khattak, Nowshera, as well as misplacing of three cards; that in the light of the said complaint, inquiry was initiated against the appellant; that the mentioned allegations were again leveled by that Ikram Rabbani against the appellant, before the respondent No.3 (IGP Khyber Pakhtunkhwa); that in the inquiry proceedings, he was held guilty and was served with charge sheet alongiwth statement of allegations, which charges were denied by the appellant in his reply; that regular inquiry was ordered in the matter and Mr. Muhammad Suleman, Superintendent of Police, Investigation, Mardan was appointed as Inquiry Officer; that inquiry was conducted and the appellant was recommended for major punishment; that the inquiry report was placed before the Regional Police Officer, Mardan (Respondent No.2), who ordered for the dismissal of appellant from service on 06.11.2023, while imposing the penalty of *censure* upon his other colleagues; that the RPO served the appellant with charge

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.729/2024

Date of presentation of Appeal.....30.05.2024
Date of Hearing.....23.10.2024
Date of Decision.....23.10.2024

Asif Ghani (Ex-IHC No.403) Police Station, Akora Khattak, District Nowshera R/O Yar Hussain Mohallah Methakhel Tehsil Lahore, District Swabi.....***(Appellant)***

Versus

1. **The District Police Officer,** Nowshera.
2. **The Regional Police Officer,** Mardan Region-I, Mardan.
3. **The Provincial Police Officer,** Government of Khyber Pakhtunkhwa, Peshawar.....(***Respondents***)

Present:
Mr. Rizwanullah, Advocate.....For the appellant
Mr. Naseer Ud Din Shah, Assistant Advocate General.....For respondents

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 30.04.2024 PASSED BY THE REGIONAL POLICE OFFICER, MARDAN (RESPONDENT NO.2) IN CAPACITY AS APPELLATE AUTHORITY WHEREBY THE DISMISSAL ORDER OF THE APPELLANT DATED 30.04.2024 RENDERED BY THE DISTRICT POLICE OFFICER (RESPONDENT NO.1) WAS MODIFIED AND CONVERTED INTO MAJOR PENALTY OF COMPULSORY RETIREMENT. A REVISION PETITION UNDER RULE 11-A OF KHYBER PAKHTUNKHWA POLICE RULES 1975 WAS FILED WITH THE PROVINCIAL POLICE OFFICER KHYBER PAKHTUNKHWA (RESPONDENT NO.3) ON 07.05.2024 BUT THE SAME WAS NOT RESPONDED.

MEMO OF COSTS
KHYBER PAKHTUNKHKWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.729/2024

Date of presentation of Appeal	30.05.2024
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Versus

1. **The District Police Officer,** Nowshera.
2. **The Regional Police Officer,** Mardan Region, Mardan.
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PRESENT

1. Mr. Rizwanullah, 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 23rd day of October 2024.

Muhammad Akbar Khan
Member (Executive)

Kalim Arshad Khan
Chairman